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SUPPLEMENT

TO

THE REVISED
CODES OF MONTANA
OF 1907

CONTAINING ALL LAWS OF A GENERAL CHARACTER ENACTED SINCE
THE TENTH LEGISLATIVE ASSEMBLY AND
NOW IN FORCE

AND

ANNOTATING ALL CONSTITUTIONAL, CODE, AND STATUTORY
PROVISIONS CITED BY THE SUPREME COURT
SUBSEQUENT TO 1907

COMPILED AND ANNOTATED

BY

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PREFACE.

Since the publication of the Revised Codes of Montana of 1907 there have been four sessions of the state legislature,—the eleventh, twelfth, thirteenth, and fourteenth. Aside from the numerous laws enacted at these sessions, amendments to the Constitution have been adopted during this period and also several measures by initiative and referendum. The new laws thus put in operation during the years of 1908 to 1916, so far as they are general in character and now in force, form the subject matter of this volume and earn for it the title, "The Supplement to the Revised Codes of Montana of 1907."

The Supplement falls naturally into six parts: The Constitution, Political Code, Civil Code, Code of Civil Procedure, Penal Code, and Miscellaneous Laws.

The Constitution has had only three amendments during the period in question. These amendments, with their annotations and the annotations to unamended provisions of the Constitution, make up Part I. Numerous amendments have been made to the Political Code, and these amendments, with their annotations, constitute Part II. Parts III, IV, and V are similarly made up of the Civil Code, the Code of Civil Procedure, and the Penal Code, respectively. Part VI is composed of such general laws as have not lent themselves to ready classification among the four codes.

In compiling the various enactments, those on the same or closely related subjects have been grouped together, and this with reference to the classification in the Revised Codes of 1907. Where new acts have, by amendment or repeal, displaced sections of the Revised Codes without having been given the numbers of the sections thus supplanted, the editor has given the new matter the section numbers formerly borne by the old. Where new laws have been added without displacing existing code sections, the new matter has, if related to any particular code sections, been placed immediately following them and given section numbers made by adding the letters of the alphabet to the numerals designating the old sections preceding.

Thus, on page 25 it will be seen that section 149, relating to the salary of the Governor, was amended in 1913; also that at the same session of the legislature a new statute was enacted providing a residence for the Governor. This new act is placed immediately after section 149 and is designated section 149a.

Again, by reference to pages 219 to 253, it will be noticed that a new highway law was adopted in 1915, and that the sections of the Revised Codes of 1907 covering the subject of highways were, either expressly or by implication, repealed. However, the legislative assembly, in adopting the new highway law, did not give the various sections thereof the numbers which the former sections of the law on that subject bore. More than this, the thirteenth legislative assembly enacted two motor vehicle laws, created a state highway commission, and adopted other measures relating to highways. The editor has grouped these different highway laws together, and given their various sec-

tions the numbers formerly attached to the sections of the Revised Codes of 1907 which are displaced by the new laws.

These illustrations will make clear the system of classification employed throughout the volume. By this method a great deal of matter, such as the coal mining code, the military code, and the pharmacy act, which the legislature, in making amendments, had taken out of the Revised Codes, has been put back and given appropriate section numbers; moreover, entirely new laws which the legislature, in enacting, might properly have placed in the codes, but did not, have there been assigned and numbered. Many of the new laws, however, have not yielded to this form of treatment, and hence have been assembled in Part VI under the head of Miscellaneous Laws. They are there classified according to their subject matter and made readily accessible.

It is hoped that this system will at once commend itself to all who may have occasion to acquaint themselves with the laws of the state. Indeed, no other practicable method has suggested itself to the publishers or the editor. Any sense of opposition to the system which the reader may feel on first using the Supplement will be nothing more than a manifestation of that resistance which innovations are so likely to arouse, and will, it is confidently believed, be of short duration.

The annotations to the Supplement show the interpretation which the supreme court has put upon all constitutional, code, and statutory provisions which have been before it since the publication of the Revised Codes of 1907. They are drawn from volumes 35 to 50, inclusive, of the Montana Reports. In addition to these annotations, copious references have been made to the monographic notes in the American Decisions, American Reports, American State Reports, American Annotated Cases, and the Lawyers Reports Annotated.

The index, it is hoped, has been so prepared as to enable readers to turn quickly to any part of the volume desired. The references in it are to pages, not to sections, and it covers the annotations as well as the statutes themselves.

San Francisco, February, 1916.

P. V. ROSS.

SUPPLEMENT

TO

REVISED CODES OF MONTANA.

PART I. CONSTITUTION.

Art. III, § 3.

The Constitution guarantees to everyone the right to pursue happiness and to acquire, possess and protect property in all lawful ways. The right to peaceful possession of property, and to free ingress to and egress from it, is secured; which rights cannot be invaded unless the public health, morals or safety, or the general welfare, require interference, or the owner is deprived of his rights by due process of law. *Iverson v. Dilno*, 44 Mont. 273, 119 Pac. 719.

Nothing in this section invalidates a code provision which requires a newspaper, after taking a contract for public printing, to sublet such part of it as it is itself unable to perform to some similar enterprise, within the state and competent. *Hersey v. Neilson*, 47 Mont. 146, Ann. Cas. 1914C, 963, 131 Pac. 30.

The statutes authorizing the state inspectors of fruit pests to destroy infected fruit are valid. *Colvill v. Fox* (Mont.), 149 Pac. 496.

Art. III, § 5.

Any statute which denies to an elector of the state, or of any portion of the state, the right to nominate candidates to public office is in violation of sections 5 and 26 of the Bill of Rights, and void. *State ex rel. Holliday v. O'Leary*, 43 Mont. 164, 115 Pac. 204.

Art. III, § 6.

The courts of the state are open to afford a remedy for such an injury as might be suffered by the holder of a valid subsisting mining claim through another person's proceeding to obtain patent to the same ground. *Poore v. Kaufman*, 44 Mont. 257, 119 Pac. 785.

A person whose business is interfered with by reason of aggressive manifestations by crowds in the alleged interest of "Organized Labor" may invoke for his protection section 6162 of the Revised

Mont. Code—1

Codes, defining a nuisance, and the constitutional provision declaring that the courts shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and that right and justice shall be administered without sale, denial or delay. *Iverson v. Dilno*, 44 Mont. 273, 119 Pac. 719.

A district judge cannot, by his own wrongful conduct, deny to a litigant the right to be heard in a court established for the purpose of administering judicial remedies. *Stephens v. Nacey*, 47 Mont. 482, 133 Pac. 361.

Art. III, § 7.

A search-warrant is a process liable to much abuse; its legality was denied by Lord Coke (*Entick v. Carrington*, 19 How. St. Tr. 1030). In this country generally it has been limited in its use by the establishment of constitutional restrictions. *State ex rel. Streit v. Justice Court*, 45 Mont. 375, 382, 48 L. R. A. (N. S.) 156, 123 Pac. 405.

Art. III, § 8.

After an indictment has been dismissed as insufficient, it is allowable that an information for the same crime be filed and the prosecution be proceeded with. *State v. Vinn*, 50 Mont. 33, 144 Pac. 773.

Editorial Notes.

Number of grand jurors necessary to constitute quorum. Ann. Cas. 1912C, 30.

Organization of grand jury. 27 L. R. A. 776.

Art. III, § 10.

In libel cases, since the Constitution says that in such cases "the jury, under the direction of the court, shall determine the law and the facts, the refusal of the jury to follow the advice of the court on the question of the libelous nature of the publication is no ground for granting a new

trial. *Harrington v. Butte Miner Co.*, 48 Mont. 556, 51 L. R. A. (N. S.) 369, 139 Pac. 451.

The right of free speech is guaranteed by the Constitution. It is declared there that no law shall be enacted impairing it and that every person shall be free to speak, write or publish whatever he will on any subject. At the same time, it leaves a way open by which everyone who abuses his privilege may be brought to account. *Kelly v. Independent Publishing Co.*, 45 Mont. 139, Ann. Cas. 1913D, 1063, 38 L. R. A. (N. S.) 1160, 122 Pac. 735.

Except in prosecutions for libel, wherein the jury, "under the instructions of the court, shall determine the law and the facts," the court shall declare the law and the jury shall determine the facts. *Allen v. Bear Creek Coal Co.*, 43 Mont. 269, 289, 115 Pac. 673.

The language of this section is not susceptible of any other meaning than this: That the individual citizen of Montana cannot be prevented from speaking, writing or publishing whatever he will on any subject; if, however, what he writes or publishes constitutes a criminal libel, he may be held responsible for the abuse of the liberty in a criminal prosecution, or if what he speaks, writes or publishes wrongfully infringes the rights of others, he may be held responsible for the abuse in a civil action for damages. *Lindsay & Co. v. Montana Federation of Labor*, 37 Mont. 276, 127 Am. St. Rep. 722, 18 L. R. A. (N. S.) 707, 96 Pac. 127, refusing to enjoin a boycotting circular.

Art. III, § 11.

This is the section by which the legislature is forbidden to pass ex post facto laws, laws impairing the obligation of contracts, or laws making irrevocable grants of special privileges, franchises or immunities. *State v. Rose*, 40 Mont. 66, 105 Pac. 82.

Editorial Notes.

Ex post facto laws, what are and when valid. 37 Am. St. Rep. 582.

Constitutional provision against ex post facto law as applicable to judicial decisions. Ann. Cas. 1914C, 228.

Equal privileges and immunities. 14 L. R. A. 579.

Fourteenth amendment considered with reference to special burdens, privileges and restrictions. 25 Am. St. Rep. 870.

Contracts, statutes, when deemed to impair. 79 Am. Dec. 495.

Contracts, statutes making pre-existing illegal. 120 Am. St. Rep. 468.

Homestead laws, when impair the obligation of contracts. 87 Am. Dec. 464.

Impairment of obligation of contracts by judicial decision. 4 Ann. Cas. 93; 9 Ann. Cas. 1121.

Impairment of ordinance granting privilege as impairment of contract obligation. 3 Ann. Cas. 88.

Privilege of using streets as contract. 50 L. R. A. 142.

Art. III, § 14.

The question is raised in this case whether the so-called Drainage District Law violates the Constitution by proposing to take or damage private property for a public use without compensating the owners. *Billings Sugar Co. v. Fish*, 40 Mont. 256, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973, 106 Pac. 565.

The assumption that a railroad, since it is for the public use and benefit, has, through being given authority by the legislature to construct its line, rights to which the rights of adjacent property holders are subordinated, is limited by the principle of the Constitution that no person can be deprived of property without due process of law. *Wine v. Northern Pac. Ry. Co.*, 48 Mont. 206, 49 L. R. A. (N. S.) 711, 136 Pac. 387.

As is said, in effect, in *State v. Auchard*, 22 Mont. 14, 55 Pac. 361, the intention of the legislature (Rev. Codes, 1340) was to declare to be public highways only those that had been established by the public authorities, or had been recognized by them and generally by the public; or those that had become such by prescription or adverse use at the time the provision was enacted. Any other construction would lay the statute under serious constitutional objection. *Bernard Realty Co. v. City of Butte*, 48 Mont. 110, 136 Pac. 1064.

The statutes authorizing the state inspector of fruit pests to destroy infected fruit are valid, though the destruction is without compensation to the owner. *Colvill v. Fox* (Mont.), 149 Pac. 496.

Art. III, § 15.

A beneficial use of the water flowing in the streams of the state is a beneficial use. It may, however, be appropriated to a more necessary public use; thus a city may acquire a water supply by the exercise of the right of eminent domain. *Carlson v. City of Helena*, 39 Mont. 82, 17 Ann. Cas. 1233, 102 Pac. 39.

The use of the waters of the state is a public use, and, such being the case, every citizen has the right to divert and use them, so long as he does not infringe upon the rights of some other citizen who has acquired a prior right by appropriation. *Featherman v. Hennessy*, 42 Mont. 542, 113 Pac. 751.

The use of flowing water in a stream is a public use; the use must be beneficial, and when the appropriator or his successor

ceases to use the water for such a purpose as that for which the appropriation was made, the right ceases. *Conrow v. Huffine*, 48 Mont. 444, 138 Pac. 1094.

The appropriator of water need not be an owner of, or a person in the possession of, land in order to make a valid appropriation for irrigation purposes. The use of water is a public use and a public service corporation can appropriate water, independently of present or future customers; otherwise the improvement of arid lands in localities where the undertaking by individuals would be too vast for them must never take place. *Bailey v. Tintinger*, 45 Mont. 175, 122 Pac. 575.

Land may be taken under the power of eminent domain for the purpose of flooding it in the construction of a dam for generating electric power to be sold to the public and also to be utilized in pumping water upon arid lands. *Helena Power etc. Co. v. Spratt*, 35 Mont. 125, 10 Ann. Cas. 1055, 8 L. R. A. (N. S.) 567, 88 Pac. 773.

This section is self-executing, and should receive a broad interpretation. *Spratt v. Helena Power etc. Co.*, 37 Mont. 78, 94 Pac. 631, holding that the taking of lands by the appellants was for a public use.

Since the use of water is declared by the Constitution to be a public use, the right to appropriate water on the land of another may be acquired by condemnation proceedings. *Prentice v. McKay*, 38 Mont. 114, 98 Pac. 1081.

Editorial Notes.

Irrigation as public use or benefit. 1 Ann. Cas. 304.

Drainage of land as public use. 20 Ann. Cas. 272; 49 L. R. A. 781; 1 L. R. A. (N. S.) 208; 22 L. R. A. (N. S.) 163.

Art. III, § 16.

The design of this provision of the Constitution is to furnish a guaranty to every person charged with a crime of a trial by a jury from the vicinage or neighborhood where the crime is supposed to have been committed, so that he may have the benefit, on his trial, of his own good character and standing with his neighbors, if these he has preserved, and also of such knowledge as the jury may possess of the witnesses who have given evidence against him. *State v. O'Brien*, 35 Mont. 495, 10 Ann. Cas. 1006, 90 Pac. 514.

The Constitution makes it the right of a person charged with crime to be confronted by his accusers. *State v. Vanella*, 40 Mont. 326, 20 Ann. Cas. 398, 106 Pac. 364.

A defendant in a criminal prosecution cannot insist upon having any particular juror sit in his case, but only that he shall be tried by an impartial jury. *State v. Byrd*, 41 Mont. 585, 111 Pac. 407.

The word "district" in the provision that the accused shall be tried by a jury from the "county or district in which the offense is alleged to have been committed," is not synonymous with the term "township," but means the precise portion of territory over which a court may exercise power in criminal matters. *State v. O'Brien*, 35 Mont. 494, 10 Ann. Cas. 1006, 90 Pac. 514.

Editorial Notes.

Right to speedy trial. 41 Am. Dec. 604.

Right to public trial and what are infringements upon it. 28 Am. St. Rep. 308.

Art. III, § 17.

In cases of a criminal nature, depositions can be taken, on notice, in the presence of the accused and his counsel "or without their presence if they shall fail to attend." *State v. Vanella*, 40 Mont. 326, 20 Ann. Cas. 398, 106 Pac. 364.

Art. III, § 18.

Although under this section no compulsion may be exercised upon a person charged with crime to make him testify against himself, still if he voluntarily goes upon the witness-stand in his own behalf, he is subject to cross-examination. *State v. Vanella*, 40 Mont. 326, 20 Ann. Cas. 398, 106 Pac. 364.

The constitutional security a person has against being twice put in jeopardy for the same offense prevents only a second prosecution after the first has resulted in a conviction or acquittal, intermediate steps such as the dismissal of an indictment on technicalities give him no such security. *State v. Vinn*, 50 Mont. 35, 144 Pac. 773.

Editorial Notes.

Autrefois acquit, plea of, when sustainable. 17 Am. Dec. 791; 58 Am. Dec. 536.

Former jeopardy, granting of a new trial after conviction for manslaughter does not permit subsequent conviction for a greater crime. 12 Am. Rep. 473; 21 L. R. A. (N. S.) 20.

Former jeopardy, identity of offenses in plea of. 92 Am. St. Rep. 89.

Former jeopardy, new trial, granting of, whether may subject defendant to conviction for higher offense. 4 Am. St. Rep. 117; 5 L. R. A. (N. S.) 571; 22 L. R. A. (N. S.) 959.

Mistrial and discharge of jury because of sickness of accused as constituting former jeopardy. Ann. Cas. 1912B, 1147.

Prosecution under statute as bar to prosecution under ordinance, and vice versa. Ann. Cas. 1912C, 37; 17 L. R. A. (N. S.) 69.

Conviction of minor offense as bar to prosecution for same act charged as higher crime. Ann. Cas. 1912C, 668.

Privilege of witnesses as to incriminating testimony. 21 Am. Dec. 55; 75 Am. St. Rep. 318.

Privilege of witnesses, waiver of by voluntarily testifying in their own behalf. 19 Am. Rep. 348.

Cross-examination involving crimination. 27 Am. Rep. 140.

Art. III, § 19.

In State v. District Court, 35 Mont. 504, 508, 90 Pac. 513, a homicide case, the order allowing bail was held properly made, in the absence of a showing by the county attorney that the proof of the defendant's guilt was evident or the presumption thereof great.

Art. III, § 20.

The statute, section 3850, Rev. Codes, as amended, making directors of corporations liable for debts of the company when they have failed to comply with the statute, does not impose excessive fines and inflict unusual punishments. Daily v. Marshall, 47 Mont. 398, 133 Pac. 681.

Art. III, § 23.

A juror cannot be said to be fair and impartial who has formed an opinion which will take evidence to remove and who entertains a prejudice against a class to which the defendant belongs. Shane v. Butte Elec. Ry. Co., 37 Mont. 601, 97 Pac. 958.

The right guaranteed by this section is the same as that guaranteed by the seventh amendment of the federal Constitution, because the federal Constitution was the fundamental law of the territory at the time of its admission as a state, and the right as it then existed was preserved in the state Constitution. Consolidated etc. Min. Co. v. Struthers, 41 Mont. 565, 111 Pac. 152.

The provision, that the right of trial by jury shall be secured to all and remain inviolate, has been construed in Montana as applying only to those cases wherein a right of trial by jury existed at the date of the adoption of the Constitution. See Montana Ore. Pur. Co. v. Boston & Mont. Con. C. & S. Min. Co., 27 Mont. 288, 70 Pac. 1114. The section refers in terms to "civil cases" and "criminal cases." Cunningham v. Northwestern Impr. Co., 44 Mont. 215, 119 Pac. 554.

The right to trial by jury is not to be lost through the matter's being made by the adverse party to follow the decision sought for by him in applying for a mandamus. Bailey v. Edwards, 47 Mont. 372, 133 Pac. 1095.

Editorial Notes.

Legislature, power of to regulate or dispense with trial by jury. 48 Am. Dec. 185; 58 Am. Dec. 791.

Jury trial, conditions and restrictions which may be imposed upon. 98 Am. St. Rep. 538.

Right to jury trial in action to foreclose mechanic's lien. Ann. Cas. 1913B, 283.

Right to jury trial in action to declare resulting trust. Ann. Cas. 1913C, 153.

Right to jury trial in election contest. Ann. Cas. 1913C, 161.

Right to jury trial in action at law where equitable defense is interposed. Ann. Cas. 1913D, 168.

Right to jury trial in contempt proceedings. Ann. Cas. 1913D, 458.

Right to jury trial in disbarment proceedings. Ann. Cas. 1913D, 1162.

Right to jury trial in action to recover on lost instrument. Ann. Cas. 1912D, 246.

General scope of constitutional provisions guaranteeing right of trial by jury. 1 Ann. Cas. 703.

Right to jury trial in actions to quiet title. 3 Ann. Cas. 248; 18 Ann. Cas. 245.

Right to jury trial in quo warranto proceedings. 5 Ann. Cas. 640.

Right to jury trial in eminent domain proceedings. 18 Ann. Cas. 680.

Denial of jury trial simply because matters in issue are complicated. 39 L. R. A. (N. S.) 45.

Relation of Magna Charta to trial by jury. Ann. Cas. 1914A, 873.

Right of defendant in equitable action to jury trial with respect to counterclaim. Ann. Cas. 1914C, 852.

Validity of court rule regulating right to jury trial. Ann. Cas. 1914B, 1184.

Whether jury in criminal case may be more or less than twelve. Ann. Cas. 1914A, 872.

Art. III, § 25.

The provision goes no further than to put aliens and denizens on the same footing as citizens in granting the right to inherit; since citizens have the right, aliens and denizens have it also. The provision is not a limitation upon the power of the legislature to impose upon it the condition prescribed in section 4835 of the Revised Codes, that "no nonresident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession." In re Colbert's Estate, 44 Mont. 265, 119 Pac. 791.

Referred to in connection with right of nonresident foreign heirs to take by suc-

cession. *State ex rel. Kolbon v. District Court*, 38 Mont. 415, 100 Pac. 207.

Editorial Notes.

Rights of aliens to receive or transmit inheritance. 12 Am. St. Rep. 93.

Right of alien with respect to inheritance of real property as affected by treaty with foreign country. *Ann. Cas.* 1912A, 1100.

Succession to rights of homesteader before perfection of title. *Ann. Cas.* 1912C, 698.

Power of aliens to hold lands. 14 Am. Dec. 97.

Right of alien to take estate as tenant by curtesy. 7 *Ann. Cas.* 504.

Art. III, § 26.

Any statute which denies to an elector of the state, or of any part of it, the right to nominate candidates to public office is in violation of sections 5 and 26 of the Bill of Rights, and void. *State ex rel. Holliday v. O'Leary*, 43 Mont. 164, 115 Pac. 204.

Art. III, § 27.

See, also, art. III, § 14, ante.

"No person shall be deprived of life, liberty or property without due process of law" is here discussed as to whether applicable or not to the creation of drainage districts under a legislative act in that connection. *Billings Sugar Co. v. Fish*, 40 Mont. 256, 20 *Ann. Cas.* 264, 26 L. R. A. (N. S.) 973, 106 Pac. 565.

The act of the legislature, Laws of 1909, chapter 67, page 81, although invalid for another reason, is not in violation of the due process of law principle of the Constitution. Whether the collection of an occupation tax in the summary manner provided by the act affords due process of law is set at rest, as to taxes generally, by *Kelly v. City of Pittsburgh*, 104 U. S. 78, 26 L. Ed. 658. See, also, *Palmer v. McMahon*, 133 U. S. 660, 33 L. Ed. 772, 10 Sup. Ct. Rep. 324. And see, also, *McMillan v. Anderson*, 95 U. S. 37, 24 L. Ed. 335, where it is said that the mode of assessing taxes is summary in all cases, in order that it may be speedy and effectual, but that summary does not mean arbitrary, or unequal or illegal. *Cunningham v. Northwestern Impr. Co.*, 44 Mont. 203, 119 Pac. 554.

The statutes authorizing the state inspector of fruit pests to destroy infected fruit are valid. *Colvill v. Fox* (Mont.), 149 Pac. 496.

Editorial Notes.

Due process of law, what is. 24 Am. Dec. 538; 20 Am. St. Rep. 554.

Succession taxes. 33 L. R. A. (N. S.) 596.

Art. III, § 29.

The rule that all provisions of the Constitution must be construed as mandatory and prohibitory, unless by express words declared otherwise, is applied to section 11 of article VIII of the Constitution, prescribing the jurisdiction of district courts in habeas corpus proceedings, in *State v. District Court*, 35 Mont. 53, 88 Pac. 564.

A provision of the Constitution is to be deemed mandatory and prohibitory unless declared to be otherwise, or else made by the instrument itself subject to exception. *State ex rel. Peyton v. Cunningham*, 39 Mont. 197, 18 *Ann. Cas.* 705, 103 Pac. 497.

The provisions of the Constitution are mandatory and prohibitory except where expressly declared otherwise. *State ex rel. Jones v. Foster*, 39 Mont. 583, 104 Pac. 860.

The provision in article VIII, section 34, of the Constitution, limiting, in the case of an appointment to fill a vacancy in an elective office, the tenure of the appointee to the time of the qualification of a person chosen by the electors to serve for the unexpired term, is exclusive and hence prohibitory. The legislature cannot extend the terms beyond that thus definitely fixed, and the governor is equally without power to do so. *State ex rel. Patterson v. Lentz*, 50 Mont. 340, 146 Pac. 932.

A constitutional provision is construed to be mandatory from the nature of the instrument, but in Montana the character is given it by express declaration to that effect. *State ex rel. Hay v. Alderson*, 49 Mont. 413, 142 Pac. 210.

The provisions of the Constitution are both mandatory and prohibitory, unless by express words they are declared to be otherwise. *State ex rel. Working v. Mayor*, 43 Mont. 63, 114 Pac. 777.

The appellate jurisdiction of the supreme court is extended under the Constitution to "all cases at law or in equity, and the rule of interpretation for ascertaining the limits of this jurisdiction is included in the maxim, 'inclusio unius est exclusio alterius,' since "the provisions of this Constitution are mandatory and prohibitory unless by express words they are declared to be otherwise." *State v. Helena W. W. Co.*, 43 Mont. 173, 115 Pac. 200.

The provisions of the Constitution are mandatory and prohibitory unless by express words they are declared to be otherwise. *Johnson v. City of Great Falls*, 38 Mont. 369, 16 *Ann. Cas.* 974, 99 Pac. 1059.

Art. IV, § 1.

The Constitution, after dividing the powers of government into three separate departments, viz., the executive, the legis-

lative and the judicial, provides that "no person or collection of persons, charged with the exercise of powers belonging to one of these departments shall exercise powers properly belonging to either of the others"; the only exception it makes is some case covered by a distinct provision of the Constitution of a contrary tenor. *State ex rel. Schneider v. Cunningham*, 39 Mont. 165, 101 Pac. 962.

A statute imposing purely legislative functions upon courts has never been upheld, but where the principal power conferred is judicial in character, the fact that the exercise of the power conferred may incidentally require the exercise also of legislative or administrative functions does not impair the validity of the enactment. *O'Neill v. Yellowstone Irr. Dist.*, 44 Mont. 504, 121 Pac. 283.

The separation of the government into three great departments does not mean that there shall be no common link of connection or dependence the one upon the other in the slightest degree; but only that the powers properly belonging to one shall not be exercised by the others. *State ex rel. Hillis v. Sullivan*, 48 Mont. 330, 137 Pac. 392.

The division of governmental powers is into the three distinct departments: legislative, executive and judicial. *State ex rel. Haviland v. Beadle*, 42 Mont. 175, 111 Pac. 720.

Section 1192 of the Penal Code forbidding the using or wearing of the insignia or ceremonials of any society, unless the person so doing is entitled to the same, is unconstitutional. *State v. Holland*, 37 Mont. 402, 96 Pac. 719.

The constitutional requirement that the several departments of government be kept distinct prevents a judge of court being made a ministerial agent to gather and furnish testimony for use by the legislature in passing upon the qualifications of its members. *State ex rel. Smith v. District Court*, 50 Mont. 140, 145 Pac. 721.

Editorial Notes.

Legislative power to fix tolls, rates or prices. 33 L. R. A. 177.

Appointments by the legislature, judicial investigation of. 35 Am. St. Rep. 62.

Power of judiciary to fix rates to be charged by public service corporation. 8 L. R. A. (N. S.) 529.

The legislative authority is vested in a legislative assembly consisting of a Senate and House of Representatives. *State ex rel. Haviland v. Beadle*, 42 Mont. 175, 111 Pac. 720.

Art. V, § 6.

For ordinary purposes the legislature may not convene oftener than once in two

years. *State v. State Board of Examiners*, 40 Mont. 59, 104 Pac. 1055.

Art. V, § 9.

Each house of the legislature shall judge of the election, returns and qualifications of its members. *State ex rel. Haviland v. Beadle*, 42 Mont. 175, 111 Pac. 720.

The power conferred is a continuing one, and may be exercised at any time during the term of a member of the legislature. *State ex rel. Smith v. District Court*, 50 Mont. 141, 145 Pac. 721.

Art. V, § 11.

Each house of the legislature, two-thirds of the persons composing it concurring, has the power of expelling a member. *State ex rel. Haviland v. Beadle*, 42 Mont. 175, 111 Pac. 720.

Art. V, § 12.

Although it is required that each house of the legislature keep a journal of its proceedings, except in rare cases, in which the Constitution requires the making of some specific entry, it is wholly within the legislative discretion to decide upon the character or minuteness of the entries. *State ex rel. Gregg v. Erickson*, 39 Mont. 280, 102 Pac. 336.

Art. V, § 16.

The sole power of impeachment is in the House of Representatives, while the Senate is the impeachment court. *State ex rel. Haviland v. Beadle*, 42 Mont. 180, 111 Pac. 722.

Art. V, §§ 17, 18.

Sections 8992 and 9006 of the Revised Codes were enacted in pursuance of the constitutional provision for removing from office, for misconduct or malfeasance, public servants who are not subject to impeachment. From a comparison of the two sections it appears that the first was intended to apply to only those cases in which the accused has been guilty of willful or corrupt misconduct or malfeasance, while the other was intended to apply to derelictions resulting from incompetency or inattention to public duties. *State ex rel. Rowe v. District Court*, 44 Mont. 323; Ann. Cas. 1913B, 396, 119 Pac. 1103.

"Judicial officers," as used in this section, was adopted by the legislative assembly in passing section 8972, Revised Codes, both provisions using the phrase in the one sense. *State ex rel. Haviland v. Beadle*, 42 Mont. 180, 111 Pac. 722.

The Governor and other state and judicial officers, except justices of the peace, may be impeached for high crimes and misdemeanors or malfeasance in office.

State ex rel. Haviland v. Beadle, 42 Mont. 175, 111 Pac. 720.

The Governor and other state and judicial officers, except justices of the peace, are open to impeachment for high crimes and misdemeanors, or malfeasance in office. State ex rel. Working v. Mayor, 43 Mont. 63, 114 Pac. 777.

A state officer can only be removed by impeachment in accordance with the provisions of this section. A policeman is not such an officer. State ex rel. Quintin v. Edwards, 38 Mont. 250, 99 Pac. 940.

Any act involving moral turpitude, or any act which is contrary to justice, honesty, principle or good morals, if performed by virtue of office or by authority of office, is included in the term "misconduct in office." State ex rel. Ryan v. Board of Aldermen, 45 Mont. 192, 122 Pac. 569.

All officers not liable to impeachment are subject to removal for misconduct or malfeasance in office in such manner as may be provided by law. State ex rel. Working v. Mayor, 43 Mont. 63, 114 Pac. 777.

Art. V, §§ 19, 20, 23.

These three sections of the Constitution, requiring that the legislature shall pass laws only by bill, that the bill shall have for its enacting clause a specific form there set out, and that it shall have but one subject and that one expressed in the title, are mandatory, and any law passed not in conformity to them is invalid. Peyton v. Cunningham, 39 Mont. 197, 103 Pac. 497.

Art. V, § 23.

The unity of title required for a bill before the legislature, in order that it may be a valid act after passage, is served notwithstanding the existence of many provisions in the act, if the provisions are germane to the general subject expressed. State ex rel. Hay v. Alderson, 49 Mont. 404, 142 Pac. 210.

The so-called "Non-partisan Judiciary Act," Laws of 1909, chapter 113, is not in harmony with the constitutional requirement that the purpose of a statute shall be clearly expressed in the title; the title of the enactment is, "An act to provide for nonpartisan nominations for judicial offices," whereas the body of it discloses its purpose of the legislation was not to provide for nonpartisan nominations, for which provision was already made, but to prohibit judicial nominations by partisan political organizations. State ex rel. Holliday v. O'Leary, 43 Mont. 165, 115 Pac. 204.

The section of the Revised Codes that declares, "No ordinance shall be passed containing more than one subject which shall be clearly expressed in its title," etc.,

imposes, the same restriction upon a city council that this section of the Constitution imposes upon the legislature. Carlson v. City of Helena, 39 Mont. 82, 17 Ann. Cas. 1233, 102 Pac. 39.

Meaningless words or phrases in the title of an act may be discarded in determining its sufficiency. Evers v. Hudson, 36 Mont. 135, 92 Pac. 462.

In determining whether the title to a statute meets constitutional requirements, the object sought to be accomplished by the legislature is always a proper subject of inquiry. Evers v. Hudson, 36 Mont. 135, 92 Pac. 462.

If all parts of a statute have a natural connection and can reasonably be said to relate, directly or indirectly, to one general and legitimate subject of legislation, the act is not open to the charge that it violates the provisions of this section, no matter how extensively or minutely it deals with the details looking to the accomplishment of the main legislative purpose. Evers v. Hudson, 36 Mont. 135, 92 Pac. 462.

Laws of 1907, page 50, treat of one general subject only, the establishment and maintenance of a system of county free high school, and the title thereof is sufficient. Evers v. Hudson, 36 Mont. 146, 92 Pac. 462.

The "estrays law," page 30 of Laws of 1903, offends this section of the Constitution. State v. Cunningham, 35 Mont. 547, 90 Pac. 755.

Laws of 1899, page 79, "relating to bonds of officers and other bonds," in so far as it applies to undertakings on appeal, is contrary to this section of the Constitution. Russell v. Chicago etc. Ry. Co., 37 Mont. 10, 94 Pac. 488, 501.

Laws of 1907, chapter 115, page 287, prohibiting gambling, does not contain more than one subject. State v. Ross, 38 Mont. 319, 99 Pac. 1056.

Editorial Notes.

Statutes, effect of provisions requiring to embrace but one subject which shall be expressed in the title. 61 Am. Dec. 337.

Statutes, sufficiency of title of. 64 Am. St. Rep. 70.

Title of statutes, when embraces but one subject, and what may be included thereunder. 79 Am. St. Rep. 456.

Validity of statute having title more comprehensive than act itself. Ann. Cas. 1912A, 102.

Validity of statute providing for penalty or punishment not mentioned in title. Ann. Cas. 1912D, 157.

Code amendment or revision, constitutionality of. 86 Am. St. Rep. 267; 55 L. R. A. 836.

Art. V, § 24.

Under this section it is required for the enactment of a law that the vote on the final passage of the bill be taken by yeas and nays, and that these be entered on the journal. *State ex rel. Gregg v. Erickson*, 39 Mont. 280, 102 Pac. 336.

Where, after a bill has, on third reading, passed the house of its origin, and the vote taken by ayes and noes and the names of those voting entered on the journal, it is amended in the other house, it is not necessary that the vote on amendments in the house of its origin be taken by ayes and noes and the names entered on the journal. *Johnson v. City of Great Falls*, 38 Mont. 369, 16 Ann. Cas. 974, 99 Pac. 1059.

Art. V, § 25.

To amend the code section, 3119, as it referred to the salaries of jailers, so as to change the language from "at a salary not to exceed ninety dollars per month" to "and receive the same salary as other deputy sheriffs," it was required, in order to satisfy this part of the Constitution, that the entire section as amended be re-enacted and published at length. *State ex rel. Hay v. Hindson*, 40 Mont. 353, 106 Pac. 362.

The fact that the "Nonpartisan Judiciary Act" amends or revises a previous statute by reference to its title only should render it void irrespective of its other constitutional defects. *State ex rel. Holliday v. O'Leary*, 43 Mont. 168, 115 Pac. 204.

The act of 1907, empowering foreign corporations to exercise the right of eminent domain, is not in violation of this section. *Spratt v. Helena Power etc. Co.*, 37 Mont. 79, 94 Pac. 631.

Art. V, § 26.

The legislature is by this section denied authority to pass laws of a local or special character granting to any corporation, association or individual any special or exclusive privilege, franchise or immunity. *State v. Rose*, 40 Mont. 66, 105 Pac. 82.

The Constitution makes it impossible for a private corporation to be created in Montana by a special act of the legislature. In *re Beck's Estate*, 44 Mont. 573, 121 Pac. 784, 1057.

A statute requiring a newspaper, after taking a contract for public printing, to sublet such part of it as it is itself unable to perform to some similar enterprise, within the state and competent, cannot be classed as local if it has state-wide application, nor special if it applies to all county printing contracts. *Hersey v. Neilson*, 47 Mont. 147, Ann. Cas. 1914C, 963, 131 Pac. 30.

An act creating a county cannot be regarded as local or special, within the meaning of the Constitution, if the legislature has been given the power to create a county by special act. *State ex rel. Geiger v. Long*, 43 Mont. 408, 117 Pac. 104.

The act of 1907, empowering foreign corporations to exercise the right of eminent domain, is not contrary to this provision of the Constitution. *Spratt v. Helena Power etc. Co.*, 37 Mont. 88, 94 Pac. 631.

A person who is not one of the class discriminated against by an alleged special law cannot complain of its unconstitutionality. *Spratt v. Helena Power etc. Co.*, 37 Mont. 88, 94 Pac. 631.

Editorial Notes.

Local or private statutes, what are. 23 Am. Dec. 543; 1 Am. St. Rep. 903; 4 Ann. Cas. 659; 2 L. R. A. 577; 7 L. R. A. 194; 11 L. R. A. 492.

General statutes, what are. 21 Am. St. Rep. 780.

Special legislation forbidden by constitutional law, what is. 21 Am. St. Rep. 780.

Special or local legislation where general laws can be made applicable. 93 Am. St. Rep. 106.

Art. V, § 27.

It is indispensable that the journal of each house contain a record entry of the signing of a bill by the presiding officer of that house. *State ex rel. Gregg v. Erickson*, 39 Mont. 280, 102 Pac. 336.

Art. V, § 31.

The provision of the Police Commission Bill of 1907 that an officer then serving on the force may be reappointed to hold during good behavior or until he is incapacitated, does not extend the term of a public officer within the prohibition of the Constitution. *State ex rel. Quintin v. Edwards*, 38 Mont. 250, 99 Pac. 940.

Editorial Notes.

Who is officer within prohibition against change of salary during term. Ann. Cas. 1914C, 214.

Art. V, § 32.

Laws of 1907, page 50, relating to the establishment and maintenance of county free high schools, does not offend this constitutional provision. In fact it has no application. *Evers v. Hudson*, 36 Mont. 146, 92 Pac. 462.

Art. V, § 36.

This provision against any delegation of power by the legislature to any special commission, private corporation or asso-

ciation with respect to municipal affairs is here invoked as invalidating any conferring of powers upon the drain commissioner to levy taxes; not, however, to the satisfaction of the court, it holding that the section is not applicable. *Billings Sugar Co. v. Fish*, 40 Mont. 256, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973, 106 Pac. 565.

The Police Commission Bill of 1907 is not void as being an unlawful delegation to any special commission of power to supervise or interfere with any municipal improvement, money, property or effects, or to perform any municipal functions, since the board created by such act is not a "special commission." *State ex rel. Quintin v. Edwards*, 38 Mont. 250, 99 Pac. 940.

Art. VII, § 1.

This section regulates the terms of state executive officers. *State ex rel. Jones v. Foster*, 39 Mont. 583, 104 Pac. 860.

Art. VII, § 4.

The peculiar wording here, "shall quarterly, as due, during their continuance in office, receive for their services," etc., leaves it to be inferred that the officer may claim his salary whether he serves or not, provided he has title to the office. *Peterson v. City of Butte*, 44 Mont. 409, Ann. Cas. 1913B, 538, 120 Pac. 483.

Art. VII, § 7.

As soon as a vacancy occurs, the appointing power may act, but, since the Constitution does not distinguish vacancies into different classes on account of the exigencies which occasion them, the term for which the appointment holds good is governed by the limitations upon the appointing power therein prescribed. *State ex rel. Patterson v. Lentz*, 50 Mont. 336, 146 Pac. 932.

Besides this section, the several provisions of the Constitution covering the tenure of office of one appointed to fill a vacancy in an elective office are: Article VII, section 14; article VIII, section 34; article XVI, sections 4 and 5. They all disclose the intention that the appointee shall hold only until the people who elected his predecessor have the first opportunity to fill the office with a person of their own choice. *State ex rel. McGowan v. Sedgwick*, 46 Mont. 189, 190, 127 Pac. 94.

There is no limit to the term of officers whose offices are established by the Constitution or which may be created by law, except as provided in the various portions of the Constitution which deal with particular officers. *State ex rel. Quintin*, 38 Mont. 250, 99 Pac. 940.

Art. VII, § 9.

In the exercise of the pardoning power the Governor is authorized to impose conditions without restriction, so long as they are not illegal, immoral or impossible of performance. See Rev. Codes, sec. 9556. *In re Sutton*, 50 Mont. 93, 145 Pac. 6.

This is a distinct grant of power by the people to each house of the legislature, and the power cannot be delegated by either house, or by both acting together; likewise neither house can divest itself of the authority thus conferred upon it. *State ex rel. Smith v. District Court*, 50 Mont. 138, 145 Pac. 721.

Editorial Notes.

Power of Governor to pardon as confined to offenses against state. Ann. Cas. 1914A, 484.

Art. VII, § 11.

Although, for ordinary purposes, the legislature may convene only once in every two years, the Governor may call it into extra session at other times for extraordinary purposes. *State v. State Board of Examiners*, 40 Mont. 59, 104 Pac. 1055.

Art. VII, § 12.

The act of 1907, page 50, relating to county free high schools, became a law in like manner as if it had been signed by the Governor, any provision in the bill notwithstanding. *Evers v. Hudson*, 36 Mont. 153, 92 Pac. 462.

A measure, having been passed on the last day of a legislative session and not acted upon by the executive until after final adjournment, would require the Governor's signature to make it operative. *State ex rel. Hay v. Hindson*, 40 Mont. 353, 106 Pac. 362.

Art. VII, § 14.

Besides this section the several provisions of the Constitution covering the tenure of office of one appointed to fill a vacancy in an elective office are: Article VII, section 7; article VIII, section 34; article XVI, sections 4 and 5. They all disclose the intention that the appointee shall hold only until the people who elected his predecessor have the first opportunity to fill the office with a person of their own choice. *State ex rel. McGowan v. Sedgwick*, 46 Mont. 189, 127 Pac. 94.

Art. VII, § 20.

This section, empowering the Governor, Secretary of State and Attorney General a board of examiners, cannot be regarded as one of the exceptions contemplated by the Constitution, in providing against the invasion of one department of government by another, so as to allow this board to

interfere with the supreme court in regard to the appointment, etc., of a stenographer for the court. *State ex rel. Schneider v. Cunningham*, 39 Mont. 165, 101 Pac. 962.

Art. VIII, § 1.

The Senate is a court when sitting for the impeachment of a state officer or judge. *State ex rel. Haviland v. Beadle*, 42 Mont. 175, 111 Pac. 722.

The section here enumerating the officers to whom judicial functions are given does not mention police justices; a police judge is not a constitutional officer, his office being created by the legislature. *State ex rel. Working v. Mayor*, 43 Mont. 63, 114 Pac. 777.

"Town," when used in the Constitution as intended to convey the sense only of incorporated town, has always the qualifying word with it. *State ex rel. Powers v. Dale*, 47 Mont. 229, Ann. Cas. 1914D, 227, 131 Pac. 670.

Editorial Notes.

Power of legislature to create or abolish courts of record. Ann. Cas. 1913C, 1160.

Art. VIII, § 2.

The purpose of the body that formulated the state Constitution was to establish a court exclusively one of review, with all the auxiliary powers necessary to the exercise of this jurisdiction, except in so far as it expressly declared otherwise. *State v. Helena W. W. Co.*, 43 Mont. 172, 115 Pac. 200.

Art. VIII, § 3.

One who claims to be illegally deprived of his liberty may, after an adverse ruling on his petition in the district court for a writ of habeas corpus, apply to the supreme court to have his rights again determined. *State v. District Court*, 35 Mont. 54, 88 Pac. 564.

The different justices are clothed with power to issue, hear and determine writs of habeas corpus, and also writs of certiorari to review proceedings for contempt in the district courts; but these powers are conferred upon the justices individually. *State v. Helena W. W. Co.*, 43 Mont. 172, 115 Pac. 200.

The supreme court has power to issue a supersedeas or any other appropriate writ in aid of an appeal which would otherwise be ineffectual. *State v. Horn*, 36 Mont. 421, 93 Pac. 351.

Art. VIII, § 7.

This section is interpreted in a prosecution for vagrancy in *State v. District Court*, 37 Mont. 205, 95 Pac. 841.

By this section the terms of the judges of the supreme court are fixed at six years. *State ex rel. Jones v. Foster*, 39 Mont. 583, 104 Pac. 860.

Art. VIII, § 9.

The clerk of the supreme court is given a term of six years and until his successor is elected and qualified. *State ex rel. Jones v. Foster*, 39 Mont. 583, 104 Pac. 860.

Art. VIII, § 11.

The jurisdiction granted to district courts and their judges under this section is exclusive; and the power of a district judge to inquire into the legality of the detention of persons in custody is therefore confined to cases where the complainant is detained within the boundaries of the district over which the judge presides. *State v. District Court*, 35 Mont. 53, 88 Pac. 564.

Every power conferred upon the judges is judicial in character, and in so far as the Corrupt Practices Act seeks to make a judge a mere agent to gather evidence for the legislature to consider in passing upon the qualifications of a member, that act is invalid. *State ex rel. Smith v. District Court*, 50 Mont. 140, 145 Pac. 721.

In order that a judgment for contempt may be proof against an attack made by habeas corpus proceedings, the court rendering it must have had jurisdiction of the person and of the subject matter, and must have possessed the power or authority to render the particular judgment it pronounced. *In re Mettler*, 50 Mont. 301, 146 Pac. 747.

The district courts have sole jurisdiction in probate matters. *State ex rel. King v. District Court*, 42 Mont. 185, 111 Pac. 717.

Where the judge of a judicial district wherein a prisoner desires to invoke the writ of habeas corpus is absent from the state, and no judge temporarily presides over the district, the application should be made to the supreme court or a justice thereof rather than to a district judge in another district. *State v. District Court*, 35 Mont. 53, 88 Pac. 564.

Art. VIII, § 12.

In a case where the office of county attorney has been awarded to a person as the successful candidate at an election, and a qualified elector of the county has duly filed a contest on the ground of malconduct on the part of the election officers, the district judge, before whom the hearing would be otherwise, may, deeming himself disqualified, call in a judge from outside the district to hear and determine the cause. *Curry v. McCaffery*, 47 Mont. 195, 131 Pac. 673.

The language of this section is to be construed so as to limit the term of the

district court judges, and therefore those also of the clerks of those courts, to four years. *State ex rel. Jones v. Foster*, 39 Mont. 583, 104 Pac. 860.

Revised Codes, section 6269, enacted to give effect to the Constitution in respect of the tenure of office of a person appointed to fill a vacancy in the district judiciary, provides that such person shall hold office "until the election and qualification of a judge to fill the vacancy, which election must take place at the next succeeding general election, and the judge so elected holds office for the remainder of the unexpired term." *State ex rel. Patterson v. Lentz*, 50 Mont. 337 et seq., 146 Pac. 932.

Art. VIII, § 15.

Cited in *State v. Horn*, 36 Mont. 418, 93 Pac. 351, in mandamus proceedings to compel a police judge to transfer a charge against the relator to the nearest justice of the peace in the city.

The Constitution provides for appeals to the supreme court from the district courts under such regulations as may be prescribed by law, following out which provision section 7098 of the Revised Codes enumerates the judgments and orders from which appeals are allowed. *Taintor v. St. John*, 50 Mont. 362, 146 Pac. 939.

The right of appeal in any case is not an absolute one; but appeals are only allowed under such regulations as may be prescribed by law. (Const., art. VIII, sec. 15.) Therefore, since the legislature has not made provision for the appointment of someone, upon whom service of notice of appeal from an order granting a new trial may be made in place of a party who has died after the order is made, the supreme court, on application for a writ of supervisory control, cannot grant relief. *State ex rel. Cohn v. District Court*, 38 Mont. 119, 99 Pac. 139.

Editorial Notes.

Writs of error, their scope and effect. 91 Am. Dec. 193.

Constitutionality of statutes abridging right of appeal. *Ann. Cas.* 1912B, 274.

Art. VIII, § 18.

This section is cited in *State v. Smith*, 35 Mont. 523, 10 Ann. Cas. 1138, 90 Pac. 750, holding that the words "next general election," as used in the act creating Sanders county, with reference to the office of clerk of the district court, mean the next general election for filling that particular office in the judicial district, not the next general election held for any purpose.

The term of office of the clerk of the district court and the time of his election

depend upon the term of the judge and the time of the election of the judge. *State ex rel. Jones v. Foster*, 39 Mont. 583, 104 Pac. 860.

Art. VIII, § 19.

The statute, Revised Codes, section 3052, was enacted in pursuance of the constitutional provision, and indicates the officer whose duty it is to sign informations in cases of prosecutions for state offenses. *State v. Barry*, 45 Mont. 585, 124 Pac. 774.

The county attorney is elected for two years, but is to hold until the election and qualification of his successor. *State ex rel. Jones v. Foster*, 39 Mont. 583, 104 Pac. 860.

Art. VIII, § 20.

A justice's court is one of limited jurisdiction, having only such powers as are conferred by law; however, when jurisdiction has been once obtained by the justice over persons brought before him for misdemeanors, errors intervening in course of the proceedings must be availed of by immediate objection, otherwise they are waived. *Hosoda v. Neville*, 45 Mont. 311, 123 Pac. 20.

The term of office of a justice of the peace is two years and no more. *State ex rel. Jones v. Foster*, 39 Mont. 583, 104 Pac. 860.

The court of a justice of the peace is one of limited jurisdiction, having only the powers given it by statute. *Jenkins v. Carroll*, 42 Mont. 312, 112 Pac. 1064.

Editorial Notes.

Amount claimed or amount due as determining jurisdiction of justice of the peace. *Ann. Cas.* 1912A, 1284.

Art. VIII, § 21.

This section is cited in *State v. O'Brien*, 35 Mont. 496, 90 Pac. 514, in connection with section 6288, in determining the jurisdiction of a justice of the peace to try an offense under the local option law.

The fact that a plaintiff formulates his pleadings on the theory that he is entitled to equitable relief does not deprive a justice's court of jurisdiction, if upon any theory of his pleadings he is entitled to other relief. *Anderson v. Red Metal Min. Co.*, 36 Mont. 319, 93 Pac. 44.

A justice's court has no equity jurisdiction; but defendants properly substituted in an action by the assignee of a labor claim cannot deprive the justice of jurisdiction by the interposition of the defense of fraud in the assignment, since such defense does not convert the cause into an equitable one. *Mettler v. Adamson*, 38 Mont. 198, 99 Pac. 441.

Art. VIII, § 23.

The regulations, prescribed by the legislature under authority of the Constitution, for appealing cases from justices' courts to the district court, are found in section 7121 of the Revised Codes, as amended by Session Laws of 1911, page 8, and sections 7123 and 7124. *State ex rel. Hackshaw v. District Court*, 48 Mont. 479, 138 Pac. 1100.

Appeals from justices' courts to the district courts are allowed in all cases in such manner and under such regulations as may be prescribed by law. *State ex rel. Rosenstein v. District Court*, 41 Mont. 100, 21 Ann. Cas. 1307, 108 Pac. 580.

When an appeal from a justice's court to the district court has been determined and the determination is in question, the proceedings must show that jurisdiction was acquired in the manner prescribed by statute. *Jenkins v. Carroll*, 42 Mont. 312, 112 Pac. 1064.

Art. VIII, § 24.

This section is cited in *State v. District Court*, 37 Mont. 204, 95 Pac. 841, wherein the jurisdiction of police courts in vagrancy cases is considered.

Art. VIII, § 27.

Prosecutions for violation of local ordinances must be conducted in the name of the municipality and by its prosecuting officer, but criminal cases arising under the state laws must be prosecuted in the name of the state and by the county attorney. *State ex rel. Streit v. Justice Court*, 45 Mont. 380, 48 L. R. A. (N. S.) 156, 123 Pac. 405.

The word "process" employed in the constitutional provision, "the style of all process shall be 'The State of Montana,'" does not include the order of sale found in the decree of a court of equity in foreclosure proceedings. *Thomas v. Thomas*, 44 Mont. 109, Ann. Cas. 1913B, 616, 119 Pac. 282.

Art. IX.

§ 2. Every person of the age of twenty-one years or over, possessing the following qualifications shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people and upon all questions which may be submitted to the vote of the people: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law; provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned; provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption

Art. VIII, § 28.

The fact that a plaintiff formulates his pleadings on the theory that he is entitled to equitable relief does not deprive a justice's court of jurisdiction, if upon any theory of his pleadings he is entitled to other relief. *Anderson v. Red Metal Min. Co.*, 36 Mont. 319, 93 Pac. 44.

Justices' courts, in the exercise of the powers granted them, must pursue the statute; it is the charter of their powers not only as to the classes of cases which they may try, but as to the procedure they must observe. *State v. Houston*, 36 Mont. 180, 12 Ann. Cas. 1027, 92 Pac. 476.

Art. VIII, § 34.

In the event of a tie vote for clerk of the district court, the board of county commissioners is authorized to appoint to fill the vacancy. *State ex rel. Jones v. Foster*, 39 Mont. 533, 104 Pac. 860.

Besides this section, the several provisions of the Constitution covering the tenure of office of one appointed to fill a vacancy in an elective office are: Article VII, sections 7 and 14; article XVI, sections 4 and 5. They all disclose the intention that the appointee shall hold only until the people who elected his predecessor have the first opportunity to fill the office with a person of their own choice. *State ex rel. McGowan v. Sedgwick*, 46 Mont. 189, 190, 127 Pac. 94.

In *State ex rel. McGowan v. Sedgwick*, 46 Mont. 187, 127 Pac. 94, the court considered the several provisions of the Constitution relating to vacancies in office, to the tenure of persons appointed to fill them, and to the time when their successors are to be chosen by the people. It is there said, in part, "In every instance of a vacancy in an elective office, where the vacancy is to be filled by appointment, the appointee shall hold only until the people who elected his predecessor have the first opportunity to fill the office with a person of their own choice." *State ex rel. Patterson v. Lentz*, 50 Mont. 339, 146 Pac. 932.

of this Constitution: Provided, that after the expiration of five years from the time of the adoption of this Constitution, no person except citizens of the United States shall have the right to vote. [Amendment adopted at general election November, 1914.]

Save where otherwise indicated, the term "qualified elector" means a person who possesses the qualifications prescribed by the Constitution as necessary to entitle him to vote; it does not mean simply a registered voter. *State ex rel. Lang v. Furnish*, 48 Mont. 32, 134 Pac. 297.

This section, along with section 12 of the same article, cannot be invoked to invalidate an election already held, under a statute providing for special elections, unless it is shown that the result of the election would have been contrary to what it was but for the disfranchisement of voters by virtue of the statute. *Potter v. Furnish*, 46 Mont. 394, 128 Pac. 542.

Laws of 1907, page 50, do not deny to voters opposed to the establishment of a high school the right to vote upon the question of the location of the school. *Evers v. Hudson*, 36 Mont. 151, 92 Pac. 462.

Editorial Notes.

Power of states to impose qualifications for voters and holders of public office. 97 Am. Dec. 263.

Art. IX, § 9.

Registration is no part of the qualifications of an elector and adds nothing to them; it is merely a method of ascertaining who the qualified electors are, in order that abuses of the elective franchise may be guarded against. *State ex rel. Lang v. Furnish*, 48 Mont. 33, 134 Pac. 297.

Editorial Notes.

Registration laws, constitutionality of. 23 Am. Dec. 642; 54 Am. Rep. 843; Ann. Cas. 1913B, 17; 25 L. R. A. 484.

Registration, power of the state to require and to prescribe mode of proof of. 28 Am. St. Rep. 260.

Registering or voting illegally, meaning of term "knowingly." Ann. Cas. 1912A, 436.

Art. IX, § 12.

This section, along with section 2 of the same article, cannot be invoked to invalidate an election, already held, under a statute providing for special elections, unless it is shown that the result of the election would have been contrary to what it was but for the disfranchisement of voters by virtue of the statute. *Potter v. Furnish*, 46 Mont. 394, 128 Pac. 542.

Editorial Notes.

Legal meaning of "taxpayer." Ann. Cas. 1914C, 1057.

Art. IX, § 13.

Laws of 1913, page 613, section 49, providing for the disposition of offices after a judgment of ouster, is invalid if it permits a candidate who has not received the highest number of legal votes to be declared elected upon the ousting of the one who received such votes. *Cadle v. Town of Baker* (Mont.), 149 Pac. 960.

Art. XI, § 1.

This and section 11 are not exclusive so as to limit the legislative power to the establishment and maintenance of common schools and state institutions only. The purpose of this section is to insure a system of common schools, but there is nothing in it which limits the power of the legislature to provide for other schools. The section is not a limitation upon the legislative power, but is a solemn mandate to the legislature. *Evers v. Hudson*, 36 Mont. 150, 92 Pac. 462.

Art. XI, § 2.

Neither this provision nor article XVII, section 1, deals with the subject of the capacity of the state to acquire property, both being limitations upon the power of disposal by the legislature; they also contain an express injunction upon that body, lest the property they deal with be devoted otherwise than to the purposes for which it has been or may be acquired. In *re Beck's Estate*, 44 Mont. 576, 121 Pac. 784, 1057.

Art. XI, § 11.

This section does not limit the legislative authority to establishing and maintaining common schools and state institutions, and is not offended by Laws of 1907, page 50, relating to county free high schools. *Evers v. Hudson*, 36 Mont. 149, 92 Pac. 462.

The control of the state university is vested in the state board of education, which consists of the Governor of the state, the superintendent of public instruction, the Attorney General, and eight citizens appointed by the Governor, by and with the consent of the Senate; each of whom holds his office for four years. In *re Beck's Estate*, 44 Mont. 581, 121 Pac. 784, 1057.

Art. XII, § 1.

The Constitution gives the power to impose a license tax upon persons doing business in the state, and in exercising the power given the legislature is not required

to tax all occupations equally or uniformly; it may single out one for the purpose, provided in imposing the tax it treats all persons alike who are engaged in it. *Quong Wing v. Kirkendall*, 39 Mont. 64, 101 Pac. 250.

All property in the state, except such as is specifically mentioned in the Constitution as exempt, is subject to taxation. *Hale v. County of Jefferson*, 39 Mont. 137, 101 Pac. 973.

The legislature is required to provide the necessary revenue for the support and maintenance of the state government by levying a tax at a uniform rate upon all property in the state not expressly exempt under constitutional provision. *State v. State Board of Examiners*, 40 Mont. 59, 104 Pac. 1055.

Property and occupation are alike legitimate objects of taxation. An occupation tax may be imposed either for regulation or revenue, or both, as provided for in *Laws 1909*, chapter 67, page 81, an act to create a state accident insurance and total permanent disability fund for coal miners, etc. *Cunningham v. Northwestern Impr. Co.*, 44 Mont. 213, 119 Pac. 554.

The constitutional injunction upon the legislature to provide for a just measure of values for purposes of taxation, like other injunctions from the same source, ought to be heeded; but if it is not, there is no way of coercing the body except by public opinion. *Northern Pac. Ry. Co. v. Mjelde*, 48 Mont. 304, 137 Pac. 386.

In the case of an outside corporation charged with selling oleomargarine, butterine and imitation cheese within the state without first obtaining a license, it cannot be contended that the requiring such a license is, under the Constitution, an invalid exercise of the taxing power. *State v. Hammond Packing Co.*, 45 Mont. 349, 123 Pac. 407.

This section is construed, with reference to inheritance taxation, in *Estate of Tuohy*, 35 Mont. 437, 90 Pac. 170.

The provisions of this section are prohibitory, and the legislature cannot delegate the authority conferred thereby to cities and towns. But the legislature may authorize them to impose a tax upon professions and occupations in aid of its police regulations, as it has done in *Laws of 1897*, page 203 (Ordinance of City of Great Falls imposing license tax on dentists, upheld). *Johnson v. City of Great Falls*, 38 Mont. 369, 16 Ann. Cas. 974, 99 Pac. 1059.

Editorial Notes.

Fourteenth amendment, state powers as affected by. 25 Am. St. Rep. 885; 14 L. R. A. 583.

Constitutional limitation on the power to impose license or occupation taxes. 129 Am. St. Rep. 249.

Power to tax occupations as affected by constitutional requirement that taxes shall be uniform. 2 Ann. Cas. 325; 15 Ann. Cas. 986.

Art. XII, § 2.

Generally speaking, the public property of the United States and of the state and its subdivisions is exempt from taxation, while other property may be made exempt, to wit, that of eleemosynary and educational institutions and places of burial not used for profit. *Northern Pac. Ry. Co. v. Mjelde*, 48 Mont. 296 et seq., 137 Pac. 386.

It was not the design of the framers of the Constitution to write into that instrument useless or meaningless phrases; hence their declaring an exception from taxation in favor of public property implies that in the absence of some such declaration that kind of property would not be exempt. *City of Kalispell v. School Dist. No. 5*, 45 Mont. 228, Ann. Cas. 1913D, 1101, 122 Pac. 742.

The provision that taxes shall be levied and collected by general laws and for public purposes only indicates that the state was attempting to do no more than announce a rule a general rule applicable to property which is ordinarily subject to taxation. *Monidah Trust v. Sheehan*, 45 Mont. 431, 123 Pac. 692.

Special assessments are within the meaning of the Constitution where it prohibits imposition by the legislature of taxes upon any property or instrumentality of the federal government. *Ford v. Great Falls*, 46 Mont. 307, 127 Pac. 1004.

Rights of the government in lands it is the owner of cannot be prejudiced by the county treasurer in issuing a tax deed. The instrument conveys no title, inasmuch as the tax on which it is based is void. *Johnson v. County of Lincoln*, 50 Mont. 258, 146 Pac. 471.

The legislature is permitted in its discretion to exempt other property devoted to certain purposes, as in the case of mines and mining claims. Section 2500 of the Revised Codes is substantially a re-enactment of this provision in the form of a statute. *Barnard Realty Co. v. City of Butte*, 50 Mont. 163, 145 Pac. 946.

Editorial Notes.

Public property, what not subject to taxation. 33 Am. St. Rep. 406.

Exemption from taxation of lands owned by governmental bodies or in which they have an interest. 132 Am. St. Rep. 291.

What is included in exemption of religious institution from taxation. Ann. Cas. 1912A, 354.

Art. XII, § 3.

The surface ground of an unpatented mining claim, when used for other than

mining purposes, and as so used has an independent value, is subject to taxation. *Cobban v. Meagher*, 42 Mont. 406, 113 Pac. 290.

At the time this section was under consideration mines and mining claims, as such, were exempt from taxation. The section does not itself so exempt, but is a revenue measure fixing an arbitrary valuation upon the surface of patented mining claims, as such, and providing the method by which the value of the mine shall be determined; but on the basis thus established neither is relieved from producing its proportion of the revenue. *Northern Pac. Ry. Co. v. Mjelde*, 48 Mont. 297 et seq., 137 Pac. 386.

The net proceeds of all mines and mining claims are taxable the same as other personal property, but the assessor is not required to follow up such proceeds in order to insure the collection of the tax, or to rely upon the solvency of the person who receives the money. The tax is a lien upon the mine from which the ores or minerals were extracted. *Tong v. Maher*, 45 Mont. 144, 122 Pac. 279.

Mines and mining claims of all sorts are exempt from taxation, the exemption having no reference, however, to the surface ground, used for some other purpose and having a separate value. *Hale v. County of Jefferson*, 39 Mont. 137, 101 Pac. 973.

This section is indulgent to mining companies in its provisions relative to taxation. *Kipp v. Davis-Daly Copper Co.*, 41 Mont. 509, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666, 110 Pac. 237.

Art. XII, § 4.

Section 4637 of the Political Code, in so far as it exacts from petitioners filing letters of administration or guardianship sums ranging from five to ninety-five dollars, according to the value of the estate, is held unconstitutional in *Hauser v. Miller*, 37 Mont. 22, 94 Pac. 197.

This section does not absolutely limit the exercise of the taxing power to corporate authorities, and the Constitution nowhere commits corporate objects or pur-

poses to authorities already existing but may commit them to some corporate authority created by the same law which creates the object or purpose. *Billings Sugar Co. v. Fish*, 40 Mont. 256, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973, 106 Pac. 265.

The meaning to be attached to the words "corporate authorities," as used in the Constitution in vesting the power to assess and tax the population for county, town or municipal purposes, is municipal officers directly elected by such population, or appointed in some mode assented to by them. *State ex rel. Gerry v. Edwards*, 42 Mont. 142, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078, 111 Pac. 734.

The Constitution by expressly withholding from the legislature the power to levy taxes upon the inhabitants or property of any county shows that the authority of that body over the affairs of counties is not plenary. *Hersey v. Neilson*, 47 Mont. 144, Ann. Cas. 1914C, 963, 131 Pac. 30.

Since this section deals exclusively with revenue and taxation and does not attempt to deal with police regulations, Laws of 1897, page 203, empowering cities and towns to impose occupation taxes, is not in contravention thereof. *Johnson v. City of Great Falls*, 38 Mont. 369, 16 Ann. Cas. 974, 99 Pac. 1059.

Art. XII, § 7.

Conceding that it is within the power of the state to divorce personal property from the person of its owner and give it a situs of its own for the purposes of taxation, the state has refrained from exercising any such power. *Monidah Trust v. Sheehan*, 45 Mont. 430, 123 Pac. 692.

In declaring that all corporations in the state shall be liable to be taxed on real and personal property owned by them, not exempted from taxation, it was not intended that a corporation should be taxed on shares of its capital stock; these being property of the stockholders, the taxes of whom it is under no obligation to pay. *Butte Land & Investment Co. v. Sheehan*, 44 Mont. 372, 120 Pac. 241.

Article XII.

§ 9. The rate of taxation on real and personal property for state purposes, except as hereinafter provided, shall never exceed two and one-half mills on each dollar of valuation; and whenever the taxable property of the state shall amount to six hundred million dollars (\$600,000,000) the rate shall never exceed two (2) mills on each dollar of valuation, unless the proposition to increase such rate, specifying the rate proposed and the time during which the rate shall be levied shall have been submitted to the people at the general election and shall have received a majority of all votes cast for and against it at such election; provided, that in addition to the levy for state purposes above provided for, a special levy in addi-

tion may be made on livestock for the purpose of paying bounties on wild animals and for stock inspection, protection and indemnity purposes, as may be prescribed by law, and such special levy shall be made and levied annually in amount not exceeding four mills on the dollar by the state board of equalization, as may be provided by law. [Amendment approved December 6, 1910.]

This section is construed, with reference to inheritance taxation, in *Estate of Tuohy*, 35 Mont. 437, 90 Pac. 170.

The rate of taxation upon real and personal property is never to exceed for one year three mills on the dollar, and the rate is to decrease as the total value of property increases; thus two and a half mills when the total valuation reaches one hundred million and one and a half when it reaches three hundred million. *State v. State Board of Examiners*, 40 Mont. 59, 104 Pac. 1055.

Art. XII, § 11.

This section is construed, with reference to inheritance taxation, in *Estate of Tuohy*, 35 Mont. 437, 90 Pac. 170.

Section 4637 of the Political Code, in so far as it exacts from petitioners filing letters of administration or guardianship

sums ranging from five to ninety-five dollars according to the value of the estate, is held unconstitutional in *Hauser v. Miller*, 37 Mont. 22, 94 Pac. 197.

Assessments for local improvements are not prohibited by the Constitution, notwithstanding this provision whereby "taxes shall be levied and collected by general laws and for public purposes only." *Billings Sugar Co. v. Fish*, 40 Mont. 256, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973, 106 Pac. 565.

Art. XII, § 12.

This section provides that no appropriations shall be made nor any expenses be authorized by the legislature whereby the expenses of the state shall exceed the total amount of tax then provided for. *State v. State Board of Examiners*, 40 Mont. 59, 104 Pac. 1055.

Art. XII.

§ 14. The Governor, state auditor and state treasurer are hereby constituted a state depository board with full power and authority to designate depositories with which all funds in the hands of the state treasurer shall be deposited, and at such rate of interest as may be prescribed by law. When money shall have been deposited under direction of said depository board and in accordance with the law, the treasurer shall not be liable for loss on account of any such deposit occurring through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct. The making of profit out of public moneys or using the same for any purpose not authorized by law, by the state treasurer or by any other public officer, shall be deemed a felony, and shall be punished as provided for by law, and part of such punishment shall be disqualification to hold any public office. [Amendment approved March 6, 1907.]

See, in connection with this section, § 192b, p. 28, post.

Art. XII, § 17.

For purposes of taxation a water right is personal property. *Helena Water Works Co. v. Settles*, 37 Mont. 237, 95 Pac. 838.

This section, in defining that which may be made subject to taxation, is comprehensive enough to include all matters and things visible and invisible, tangible and intangible, corporeal and incorporeal, that is capable of private ownership. *Cobban v. Meagher*, 42 Mont. 407, 113 Pac. 290.

Art. XIII, § 4.

The Constitution preserves a distinction between a municipal corporation and a county, the latter possessing no powers of local legislation or control. *Hersey v. Neilson*, 47 Mont. 141, Ann. Cas. 1914C, 963, 131 Pac. 30.

Art. XIII, § 5.

The language here employed is, "No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars without the approval of a majority of the

electors thereof," but in the case of an indebtedness or liability for building a bridge the "single purpose" would include also approaches to the bridge; it is to be considered, too, that a contract amounting to within two dollars of the maximum authorized would be invalid for obvious reasons. *Jenkins v. Newman*, 39 Mont. 77, 101 Pac. 625.

According to *Tinkel v. Griffin*, 26 Mont. 426, 68 Pac. 859, "the evident meaning of the Constitution is that the approval (of the increased indebtedness or liability incurred for a single purpose) must be the result of an expression of a majority of those voting" at the election; the required majority not being a majority of all the electors of the county. *Morse v. Granite County*, 44 Mont. 94, 119 Pac. 286.

Since the Constitution is "mandatory and prohibitory," this section is intended to limit the power of every county, though any agency whatever, as to an expenditure for a single purpose to a certain figure, unless the approval of the people for such an expenditure has been previously secured. *Panchot v. Leet*, 50 Mont. 321, 146 Pac. 927.

In case the result of an election has been favorable to having the board of high school trustees erect at once a high school building, and the cost of such a building is in excess of ten thousand dollars, and a statute makes it compulsory upon the board to proceed accordingly, the board may not proceed nevertheless, since the expenditure would be in violation of the Constitution unless previously approved by the electors. *Panchot v. Leet*, 50 Mont. 317, 146 Pac. 927.

The constitutional restriction is upon the authority of the board of county commissioners, and has no reference to the power of the people; the power of the board of county commissioners is limited, but that of the people is unlimited save as affected by other constitutional declarations. *Reid v. Lincoln County*, 46 Mont. 57, 125 Pac. 429.

Art. XIII, § 6.

This section is construed in *Butler v. Andrus*, 35 Mont. 575, 90 Pac. 785, with reference to an indebtedness for water and light, the court observing that the constitutional limitation is clear and means just what it says, namely, that no indebtedness may be contracted in any manner or amount, for any purpose, in excess of the prescribed limit.

The general policy of the Constitution tends to allowing the people in the different municipalities as far as possible to control their own affairs, and a legislature, bearing this in mind and also another constitutional provision, to wit, that "where a general law may be made applicable no

special law shall be enacted," may by a general law grant permission to all the municipalities in the state to incur the additional indebtedness, to which this section refers, when the people residing and owning property therein shall judge it to be necessary to do so. *Carlson v. City of Helena*, 39 Mont. 82, 17 Ann. Cas. 1233, 102 Pac. 39.

A city may not, while already indebted beyond the constitutional limit, use its revenues to acquire an electric light plant, having at hand at the time a source of supply sufficient to meet all requirements. *Palmer v. City of Helena*, 40 Mont. 498, 107 Pac. 512.

A debt, once incurred by a municipality, does not stand as a fixed figure to which future debts are to be added in considering whether the tax limit has been reached, but varies according to payments made from time to time to diminish it, also it is possible that the difference between the original debt and the limit may grow meantime according to the increase of taxable property within the municipality. *Arnold v. Miles City*, 46 Mont. 479, 128 Pac. 915.

Editorial Notes.

What is indebtedness within meaning of prohibitions against. 44 Am. St. Rep. 229; 23 L. R. A. 404; 37 L. R. A. (N. S.) 1058.

Right of municipality to contract for periodical payments throughout term of years where aggregate payments exceed authorized debt limit. Ann. Cas. 1913B, 1177; 7 Ann. Cas. 150.

Recitals in municipal bond that debt limit has not been exceeded as affecting validity thereof in hands of purchasers. 17 Ann. Cas. 1245.

Art. XV, § 2.

Special laws granting, extending, changing or amending corporation charters are prohibited, the legislature being required to provide by general laws for the organization of corporations; but these laws are subject to change, repeal or alteration by subsequent legislatures. *Somerville v. St. Louis M. & M. Co.*, 46 Mont. 273, L. R. A. 1915B, 811, 127 Pac. 464.

Laws of 1903, page 156, relating to the liability of railways to employees, is a valid exercise of legislative power under this and the following section of the Constitution. *Lewis v. Northern Pac. Ry. Co.*, 36 Mont. 207, 92 Pac. 469.

The legislature may not only alter corporate charters, but destroy the corporate body if deemed expedient. *Lewis v. Northern Pac. Ry. Co.*, 36 Mont. 207, 92 Pac. 469.

In this state a private corporation may not be created by special law. In re

Beck's Estate, 44 Mont. 573, 121 Pac. 784, 1057.

Corporations organized under chapters 25 and 26, division 5 of the Compiled Statutes, took their charters with notice that while the statute provided for "assessments upon the stock of corporations," it provided also, "The legislature may at any time alter, amend or repeal this chapter"; however, under a later law (Rev. Codes, sec. 3888), a nonassessable corporation may become an assessable one by consent of two-thirds of the stock. *Somerville v. St. Louis M. & M. Co.*, 46 Mont. 273, L. R. A. 1915B, 811, 127 Pac. 464.

Art. XV, § 4.

In nonassessable corporations the share of capital stock is established as the unit of voting power in the election of trustees or directors, other than this section there being no constitutional provision on the subject. *Smith v. Iron Mountain Tunnel Co.*, 46 Mont. 15, Ann. Cas. 1914B, 551, 125 Pac. 649.

Editorial Notes.

Proxies, irrevocable. 56 Am. St. Rep. 138.

Elections, voting by proxy. 27 Am. Dec. 60; 29 L. R. A. 844.

Meetings, agreements to control future voting of stock at. 56 Am. St. Rep. 138.

Right to vote pledge stock. Ann. Cas. 1912A, 206.

Rights and powers of proxy of stockholders. Ann. Cas. 1912C, 865.

Art. XV, § 5.

The Constitution has declared that all railroad companies shall be public carriers and all railroads public highways. *Kipp v. Davis-Daly Copper Co.*, 41 Mont. 509, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666, 110 Pac. 237.

It is not permitted to a railroad company arbitrarily to classify the patrons of its road. Even the legislature must exercise a reasonable discretion in making classifications for taxation and license purposes. *John v. Northern Pacific Ry. Co.*, 42 Mont. 36, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

Art. XV, § 7.

This section and the cases of *Rose v. Northern Pac. Ry. Co.*, 35 Mont. 70, 119 Am. St. Rep. 836, 88 Pac. 767, and *Brian v. Oregon Short Line Ry. Co.*, 40 Mont. 109, 105 Pac. 489, recognize the distinction between a ticket sold at the regular fare and one sold at a reduced fare or special price. *Miley v. Northern Pac. Ry. Co.*, 41 Mont. 51, 108 Pac. 5.

All persons, under this provision, are given equal right to have persons or prop-

erty transported on and over any railroad. *Kipp v. Davis-Daly Copper Co.*, 41 Mont. 509, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666, 110 Pac. 237.

This provision, when considered in connection with that in section 5 of the same article, demonstrates that the Constitution regards all railroads as public highways, subject to use by the public of right, amenable to the laws governing common carriers forever forbidding all obnoxious favoritisms between those who desire to use railroads. *John v. Northern Pac. Ry. Co.*, 42 Mont. 36, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

Art. XV, § 11.

Foreign corporations doing business in the state are not entitled to any greater rights than are enjoyed by domestic corporations engaged in the same kind of business. *Lewis v. Northern Pac. Ry. Co.*, 36 Mont. 207, 92 Pac. 469.

The act of 1907, authorizing foreign corporations to exercise the right of eminent domain, is not violative of this section. *Spratt v. Helena Power etc. Co.*, 37 Mont. 88, 94 Pac. 631.

This provision was intended to prohibit the passage of any law whereby a foreign corporation might be indulged with privileges greater than those enjoyed by domestic ones, and it is only when a foreign corporation attempts to exercise or enjoy a right or privilege expressly given it by the legislature that its right in that connection may be questioned. *Uihlein v. Caplice Commercial Co.*, 39 Mont. 327, 102 Pac. 564.

This section enumerates generally the powers of building and loan associations, and, among other things, provides the terms upon which a member may secure the cancellation of his loan. *Western Loan & Savings Co. v. Smith*, 42 Mont. 448, 113 Pac. 475.

Laws intended to apply to foreign corporations must be framed on the theory that they are created under conditions and limitations over which the state legislature has no control; acts of the legislature are in harmony with the Constitution unless they discriminate against domestic corporations. *Daily v. Marshall*, 47 Mont. 397, 133 Pac. 681.

Editorial Notes.

Power of states to discriminate against foreign corporations. 95 Am. Dec. 536.

What constitutes doing business in state by foreign corporation. Ann. Cas. 1912A, 553; Ann. Cas. 1913E, 1154.

Art. XV, § 12.

"Town," when used in the Constitution as intended to convey the sense only of

incorporated town, has always the qualifying word with it. *State ex rel. Powers v. Dale*, 47 Mont. 231, Ann. Cas. 1914D, 227, 131 Pac. 670.

The granting of a right of way, under statutory authority, to street railways or other such corporations, and the regulating the running and management of them in the use of the streets, etc., carries out, on the part of the municipality, the plain intent of this constitutional provision. *Kipp v. Davis-Daly Copper Co.*, 41 Mont. 509, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666, 110 Pac. 237.

Art. XV, § 13.

The power of the legislature to re-create a right already lost is specifically withheld by the Constitution, this principle being here applied to the operation of the statute of limitations and to Revised Codes, section 2743, for the recovery of taxes paid under protest. *Dolenty v. Broadwater County*, 45 Mont. 268, 122 Pac. 919.

Art. XV, § 14.

The authority to prescribe regulations for the conduct of the telegraph and telephone business is lodged in the legislature, but not to the extent that no part of such authority can be delegated to, or conferred upon, the cities of the state. *City of Butte v. Montana Independent Tel. Co.*, 50 Mont. 578, 148 Pac. 384.

Art. XV, § 16.

Assumption of risk, as a defense, is derived from the common-law doctrine of *volenti non fit injuria*, and is no part of the contract between master and servant; therefore, this section of the Constitution does not take away the defense. *Osterholm v. Boston Min. Co.*, 40 Mont. 508, 107 Pac. 499.

Art. XVI, § 2.

This provision, denying power to the legislature to remove a county seat, is self-executing, under the uniform rule a prohibitive provision is self-executing. *State v. Board of County Commrs. of Chouteau Co.*, 42 Mont. 75, 111 Pac. 144.

Art. XVI, § 4.

The statutes enacted to give effect to the provision are Revised Codes, section 2883 and Laws of 1913, chapter 5. The power of appointment need not be invoked by petition or complaint, and its exercise by the judge does not depend upon facts found judicially; no decree is pronounced and no rights are adjudicated. *State ex rel. Downen v. District Court*, 50 Mont. 251, 146 Pac. 249.

Besides this section, the several provisions of the Constitution covering the

tenure of office of one appointed to fill a vacancy in an elective office are: Article VII, sections 7 and 14; article VIII, section 34; article XVI, section 5; they all disclose the intention that the appointee shall hold only until the people who elected his predecessor have the first opportunity to fill the office with a person of their own choice. *State ex rel. McGowan v. Sedgwick*, 46 Mont. 189, 127 Pac. 94.

Art. XVI, § 5.

Whether the Constitution fails to define the tenure of one appointed to fill a vacancy in the office of county commissioner depends upon the construction to be given to the language of this section. The theory of our law is that officers shall be elected whenever it can be conveniently done, and that appointments to office will be tolerated only in exceptional cases. *State ex rel. McGowan v. Sedgwick*, 49 Mont. 189 et seq., 127 Pac. 94.

The legislature in enacting the statute, Laws 1913, chapter 5, section 1, proceeded upon the theory that the words in the Constitution, "until the next general election" ought to be ignored as wholly without meaning, or must be construed as meaning, "until the person elected at the general election for the ensuing regular term of two years may assume the office"; that is, as expressed in the act, "until the first Monday in January next after the general election." *State ex rel. Rowe v. Kehoe*, 49 Mont. 587, 144 Pac. 159.

This section regulates the terms of all county officers. *State ex rel. Jones v. Foster*, 39 Mont. 583, 104 Pac. 860.

Art. XVI, § 6.

County officials are not limited to those expressly enumerated in the Constitution, for this section provides "for the election or appointment of such other county, precinct and municipal officers as public convenience may require." *Billings Sugar Co. v. Fish*, 40 Mont. 256, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973, 106 Pac. 265.

It cannot be said that a "patrolman" is a local municipal officer, in contradistinction from a policeman, and that as such he comes within the designation of "municipal officer" as used in this section; the words are synonymous. *State ex rel. Quintin v. Edwards*, 40 Mont. 287, 20 Ann. Cas. 239, 106 Pac. 695.

To appoint a person captain of police for a life tenure would be in violation of this section. *State ex rel. Bailey v. Edwards*, 40 Mont. 313, 106 Pac. 703.

A policeman is a municipal officer within the class designated as "municipal officers" in this section. *State ex rel. Wynne v. Quinn*, 40 Mont. 472, 107 Pac. 506.

A policeman is not a "municipal officer" within the meaning of article 16, section

6, to limiting the term of such officers to two years; neither is he a mere servant or employee of the municipality. The term "municipal officers" as used in the Constitution means "city officers." So the provision of section 3 of the Police Commission Bill of 1907, that policemen shall hold office during good behavior, is valid. The various provisions of the Constitution prescribing the terms of particular officers mentioned therein do not deprive the legislature of the power to make a longer term where the Constitution fixes no term for officers. State ex rel. Quintin v. Edwards, 38 Mont. 250, 99 Pac. 940.

The Constitution is clear in preserving a distinction between a municipal corporation and a county, the latter possessing no more than a school district, the powers of local legislation and control. Hersey v. Neilson, 47 Mont. 141, Ann. Cas. 1914C, 963, 131 Pac. 30.

Art. XVII, § 1.

State lands are divided into four classes, of which class 4 comprises "lands within the limits of any town or city or within three miles of such limits." While lands of the first and third class may be sold or leased, the board is commanded to sell lands of the fourth class and nothing is said about leasing them. If, however, authority to lease such lands be held to be derived from the enabling act, the utmost that can be said is that permission was given the state to lease without requiring it to do so. State ex rel. Gibson v. Stewart, 50 Mont. 406, 147 Pac. 276.

Public lands granted to the state by the United States are subject to public sale, and it was so intended by Congress and the framers of the state Constitution, for the enhancement and enlargement of internal improvements and swelling the common school fund. State ex rel. Galen v. District Court, 42 Mont. 113, 112 Pac. 706.

Neither this provision nor article XI, section 2, deals with the subject of the capacity of the state to acquire property, both being limitations upon the power of disposal by the legislature; they also contain an express injunction upon that body, lest the property they deal with be devoted otherwise than to the purposes for which it has been or may be acquired. In re Beck's Estate, 44 Mont. 576, 121 Pac. 784, 1057.

Art. XIX, § 1.

On assuming office an alderman must

swear that he will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to his office other than the compensation allowed by law. State ex rel. Ryan v. Board of Aldermen, 45 Mont. 193, 122 Pac. 569.

Art. XIX, § 4.

Revised Codes, sections 6824 and 6825, were enacted in obedience to the injunction of the Constitution, and must be liberally construed. Mennell v. Wells (Mont.), 149 Pac. 954.

Art. XIX, § 6.

Every county must have a county seat. State ex rel. Geiger v. Long, 43 Mont. 414, 117 Pac. 104.

Art. XIX, § 9.

The initiative and referendum is to be regarded as a single measure, and not separable propositions which to be validly adopted at the same election should have been so prepared and distinguished by separate numbers or otherwise that each could have been voted upon separately. State ex rel. Hay v. Alderson, 49 Mont. 402 et seq., 142 Pac. 210.

Editorial Notes.

Provisions of Constitution for amendment thereof as mandatory or directory. 15 Ann. Cas. 786; 10 L. R. A. (N. S.) 149.

Ord. 1, Subd. 2.

The legislature has no power to impose a tax of any character upon any property or instrumentality of the federal government, and this immunity includes special assessments. Ford v. Great Falls, 46 Mont. 307, 127 Pac. 1004.

Ord. 1, Subd. 7.

The state accepted public lands from the United States only upon the terms of the enabling act, and these terms were, in part, to the effect that the lands, surveyed or unsurveyed, should be reserved for school purposes only. State ex rel. Galen v. District Court, 42 Mont. 113, 112 Pac. 706.

PART II.

POLITICAL CODE.

§ 4.

Though a statute must be liberally construed, still the court cannot go beyond

its plain provisions. *Harrington v. Butte etc. Ry. Co.*, 36 Mont. 478, 483, 93 Pac. 640.

§ 10a. Columbus Day.

The 12th day of October of each and every year is hereby made and declared a public holiday to be known as "Columbus Day," and shall be recognized, classed and treated as other legal holidays under the laws of this state. [Approved and in effect February 17, 1909; Laws 1909, c. 22, p. 24.]

§ 16.

"Person" includes corporation. See note

post, § 4725, and §§ 6224, 8071 and 8099. For editorial notes, see same sections.

§ 51. Terms of Office of Senators and Representatives.

The term of office of a senator is four years, and of a representative two years; and the term of service thereof shall begin on the first Monday of January next succeeding his election, and if a senator or representative be elected to fill a vacancy, his term of service shall begin on the next day after his election. [Amendment approved February 16, 1909; Laws 1909, p. 20.]

§ 54a. Legislative Apportionment—Number of Representatives from Each County.

(Section 1.) After the expiration of the Twelfth Legislative Assembly of Montana the membership of the House of Representatives of all legislative assemblies of Montana shall be apportioned amongst and to the several countries of the state upon and according to the official federal census enumeration of the inhabitants of the several counties of Montana had and taken by authority of law in the year 1910 and upon the ratio of one representative or member therein from each county for each forty-eight hundred persons in such county or fractional part thereof in excess of twenty-four hundred persons; provided, each county shall be entitled to at least one member.

(Section 2.) In accordance therewith each county of the state shall be entitled to and shall elect at each biennial general state and county election the number of members of the House of Representatives in the legislative assembly of Montana herein below allotted and apportioned to it and set opposite its name, as follows, to wit:

Beaverhead County	One member
Broadwater County	One member
Carbon County	Three members
Cascade County	Six members
Chouteau County	Four members
Custer County	Three members
Dawson County	Three members

Deer Lodge County.....	Three members
Fergus County	Four members
Flathead County	Four members
Gallatin County	Three members
Granite County	One member
Jefferson County	One member
Lewis & Clark County.....	Five members
Lincoln County	One member
Madison County	Two members
Meagher County	One member
Missoula County	Five members
Park County	Two members
Powell County	One member
Ravalli County	Two members
Rosebud County	Two members
Sanders County	One member
Silver Bow County.....	Twelve members
Sweet Grass County.....	One member
Teton County.....	Two members
Valley County	Three members
Yellowstone County	Five members

(Section 3.) Whenever a new county is created it shall have and be entitled to one member of the House of Representatives until otherwise apportioned. [Approved February 21, 1911; Laws 1911, c. 38, p. 67.]

§ 62. Officers and Employees of Senate.

The officers and employees of the Senate shall consist of a president, president pro tem., one secretary, one assistant secretary, one sergeant-at-arms, two assistant sergeant-at-arms, one journal clerk, one assistant journal clerk, one enrolling clerk, one assistant enrolling clerk, one engrossing clerk, one assistant engrossing clerk, one reading clerk, one printing clerk, one bill clerk, one doorkeeper, two assistant doorkeepers, one janitor, two assistant janitors, one day watchman, one night watchman, one chaplain, five pages, and such number of committee clerks as the Senate may, by motion from time to time determine, not exceeding twenty-nine in number. [Amendment approved January 22, 1915; Laws 1915, p. 1.]

§ 63. Officers and Employees of House.

The officers and employees of the House of Representatives shall consist of a speaker, speaker pro tem., one chief clerk, one assistant chief clerk, one sergeant-at-arms, two assistant sergeant-at-arms, one journal clerk, one assistant journal clerk, one enrolling clerk, one assistant enrolling clerk, one engrossing clerk, one assistant engrossing clerk, one reading clerk, one printing clerk, one bill clerk, one doorkeeper, two assistant doorkeepers, one janitor, three assistant janitors, one day watchman, one night watchman, one chaplain, seven pages, and such number of committee clerks as the house may, by motion, from time to time determine, not exceeding seventy in number. [Amendment approved January 22, 1915; Laws 1915, p. 1.]

§ 65. [Repealed.]

By act approved January 22, 1915; Laws 1915, p. 3.

§ 66. [Repealed.]

By act approved January 22, 1915; Laws 1915, p. 3.

§ 70.

This section requires the journals to be authenticated. *State v. Erickson*, 39 Mont. 280, 289, 102 Pac. 336.

In determining whether an act has been passed, the enrolled bill, signed and approved by the proper officers, is conclu-

sive upon the courts, and recourse cannot be had to any other evidence, except where the alleged infirmity of the act is based upon a failure to enter the names of those voting upon its final passage, in which case the journals may be consulted. *State v. Erickson*, 39 Mont. 280, 289, 102 Pac. 336.

§ 74. Duties of Clerks—Enrollment of Bills.

The engrossing clerks and enrolling clerks must, within forty-eight hours after their reception, engross or enroll all bills delivered to them for engrossment or enrollment, unless further time be granted. [Amendment approved January 22, 1915; Laws 1915, p. 1.]

§ 75. [Repealed.]

By act approved January 22, 1915; Laws 1915, p. 3.

§ 76.

Just what is meant to be included in the phrase, "all bills and papers," is not clear;

but it would be extremely dangerous to impeach a duly authenticated record—an enrolled bill—by papers which are not authenticated or identified in any manner; this, however, does not apply to the journals, for they are required, by § 70, ante, to be authenticated. *State v. Erickson*, 39 Mont. 280, 289, 102 Pac. 336.

§ 77. Per Diem to Members of Legislature.

Members of the legislative assembly hereafter elected shall receive ten dollars per day, payable weekly during the session of the legislative assembly, and ten cents per mile for each mile of travel to and from their residence and the place of holding the session, by the nearest traveled route. [Amendment approved March 2, 1909; Laws 1909, p. 54.]

§ 78. Compensation of the President of Senate and Speaker of House.

The president of the Senate after the first Monday in January, 1913, and the speaker of the house shall receive the sum of twelve dollars per day during the session of the legislative assembly, and the same mileage as members. [Amendment approved March 2, 1909; Laws 1909, p. 54.]

§ 79. Compensation of Other Officers and Employees.

There must be paid to the secretary of the Senate, the chief clerk of the House of Representatives, and the sergeant-at-arms of each house, ten dollars per day each; to the assistant secretary of the Senate, the assistant chief clerk of the House of Representatives, the journal clerk, the engrossing clerk, enrolling clerk and assistant sergeant-at-arms, eight dollars per day each; to the bill clerk, assistant journal clerk, printing clerk, reading clerk, the clerks of the president of the Senate and speaker of the house, the judiciary clerk of each house, the clerks of the chief clerk of the house and the secretary of the Senate, six dollars per day each; to the committee clerks, doorkeepers, janitors, assistant janitors, watchman, and chaplain of each house, five dollars per day each; to each page and messenger, four dollars per day; to all employees of the legislative assembly not herein specifically enumerated, five dollars per day each. [Amendment approved January 22, 1915; Laws 1915, p. 1.]

Prior amendments: Laws 1913, p. 52; Laws 1909, p. 53.

§ 80. [Repealed.]

By act approved March 2, 1909; Laws 1909, c. 45, p. 54.

§ 81a. Employment of Additional Help in Emergencies.

The Senate and House of Representatives may by a joint resolution, adopted and spread upon the minutes of each house, provide for the employment of additional help in cases of emergency where extraordinary conditions render such a course necessary for the orderly and expeditious conduct of the business of the legislative assembly. The resolution shall set forth the facts and circumstances which makes such action necessary and the number of additional employees required and the general nature of their duties. [Approved January 22, 1915; Laws 1915, p. 1.]

§ 82.

The method provided in this section, and succeeding ones, of instituting a contest is not exclusive; the power conferred on each house of the legislature to try a contest of the seats of members of that body is a continuing one, and may be exercised at any time during the member's term. *State (ex rel. Smith) v. District Court*, 50 Mont. 134, 145 Pac. 721.

§ 83.

The rights of a contestant are not abridged in any respect by a failure to commence his proceedings within the twenty-day period designated in this section; such failure operates only to preclude him from having depositions taken in the manner and at the time provided in §§ 84-87, post; it leaves him every other facility for a hearing. *State (ex rel. Smith) v. District Court*, 50 Mont. 134, 145 Pac. 721.

§ 110. Secretary of State to Certify Measures to be Voted upon—Title and Designation.

The Secretary of State, at the same time that he furnishes to the county clerk of the several counties certified copies of the names of the candidates for office, shall also furnish the said county clerks his certified copy of the titles and numbers of the various measures to be voted upon at the ensuing general or special, election, and he shall use for each measure, a title designated for that purpose by the legislative assembly, committee, or organization presenting and filing with him the act, or petition for the initiative or the referendum or in the petition or act; provided, that such title shall in no case exceed 100 words, and shall not resemble any such title previously filed for any measure to be submitted at that election which shall be descriptive of said measure, and he shall number such measures; and such title shall be printed on a separate official ballot in the order in which the acts referred by the legislative assembly and petitioned by the people shall be filed in his office.

The first measure filed after this act shall go into effect shall be numbered number 6, and the next succeeding measures shall be numbered in numerals consecutively 7, 8, 9, and so on from one election to another, no measure to be numbered with the same number of any other measure.

The affirmative and negative of each measure shall have the same number.

It shall be the duty of the several county clerks to print said titles and numbers upon a separate official ballot in the order presented to them by the Secretary of State and the relative position required by law.

Measures proposed by the initiative shall be designated and distinguished from measures proposed by the legislative assembly by the heading "Proposed Petition for Initiative." [Amendment approved March 8, 1913; Laws 1913, p. 129.]

§ 111. Manner of Voting—Ballot.

The manner of voting on measures submitted to the people shall be: By marking the ballot with a cross in or on the diagram opposite and to the left of the proposition for which the voter desires to vote. The following is a sample ballot representing negative vote:

- ☐ For Initiative Measure No. 6.
Relating to Duties of Sheriffs.
- ☒ Against said Measure No. 6.
- ☐ For Referendum Measure No. 7.
Relating to Purchase of Insane Asylum.
- ☒ Against said Measure No. 7.

and no title on a ballot shall contain more than ten words, which shall be descriptive of the measure proposed. [Amendment approved March 8, 1913; Laws 1913, p. 129.]

§ 119.

Application of section. See note post, § 3119.

This section merely states a general rule as it was recognized by the authorities at the time of the adoption of the codes. *State v. Board of County Commissioners*, 47 Mont. 531, 539, 134 Pac. 291.

Editorial Notes.

Repeal of statutes by implication. 14 Am. Dec. 209; 88 Am. St. Rep. 271.

§ 120.

By adopting a statute from another state, after construction thereof by the highest court of that state, the legislature will be presumed to have adopted the construction thus placed upon it. *Deer Lodge County v. United States F. & G. Co.*, 42 Mont. 315, 328, Ann. Cas. 1912A, 1010, 112 Pac. 1060.

§ 149. Salary of Governor.

The annual salary of the Governor, to include all services rendered ex officio as member of any board or commission, as now required, or which may be by law hereafter devolved upon him, is seven thousand five hundred dollars (\$7,500). [Amendment approved February 14, 1913; Laws 1913, p. 23.]

§ 149a. Residence of Governor.

(Section 1.) The state furnishing board is hereby authorized and directed to provide an executive residence in the city of Helena, for the use of the Governor of the state. Said residence to be secured by purchase or otherwise as may seem best to said board.

(Section 2.) For the purpose of carrying out the provisions of section 1 of this act there is hereby appropriated out of any funds in the state treasury not otherwise appropriated the sum of thirty thousand dollars (\$30,000) or so much thereof as may be necessary.

(Section 3.) For the purpose of furnishing and maintaining said residence and accessories there is hereby appropriated for the year 1913 the sum of five thousand (\$5,000) dollars, and for the year 1914 the sum of two thousand five hundred (\$2,500) dollars, all of said sums to be expended under the direction of the state furnishing board in like manner as other state expenditures. [Approved March 4, 1913; Laws 1913, c. 51, p. 87.]

§ 165.

Amended as to fees required of foreign corporations. See § 4420a, post.

This section, in so far as it applies to foreign corporations seeking to engage in interstate commerce in this state, is inoperative and void. *Chicago etc. Ry. Co.*

v. Swindlehurst, 47 Mont. 119, 126, 130 Pac. 966.

This section, fixing a fee for the recording and filing of certificates of incorporation "of any foreign corporation," applies to foreign corporations that seek to conduct private intrastate business,—those over which this state has the right to exercise some degree of regulation or control; it has no application to foreign corporations that seek to engage in interstate commerce in this state. *State v. Alderson*, 49 Mont. 29, 39, 140 Pac. 82.

The fee demanded by this section is not a property tax; it is graduated according to the par value of the company's capital stock, without reference to the full cash value of the property owned by the corporation; and it does not become a lien upon any property which the corporation may have in this state, as does a property tax under § 2600, post. *State v. Alderson*, 49 Mont. 29, 32, 33, 140 Pac. 82.

The fee fixed by this section, for the recording and filing of certificates of incorporation, is an impost, an excise, or license tax exacted from every corporation, domestic or foreign, for the privilege of doing business within the state, and is authorized by the constitution. *State v. Alderson*, 49 Mont. 29, 33, 140 Pac. 82.

The Secretary of State cannot demand the fee mentioned in the fourth and tenth subdivisions of this section from a foreign corporation that seeks to engage in interstate commerce in this state; to permit him to do so would impose a burden upon interstate commerce. *State v. Alderson*, 49 Mont. 29, 37, 140 Pac. 82.

While the Secretary of State has no right to collect a fee for the recording and filing of certificates of incorporation of foreign corporations that seek to engage in interstate commerce in this state, yet this does not prevent him from insisting upon his legal right to exact a recording and filing fee from a foreign corporation that seeks to conduct a private intrastate business. *State v. Alderson*, 49 Mont. 29, 37, 140 Pac. 82.

Where one foreign corporation absorbs another, and files with the Secretary of State a paper, which amounts to a certificate of increase of capital stock, that official is not required to deduct the amount of the capital stock of the absorbed corporation, upon which the fees have once been paid, from the amount shown by the certificate of increase, but may lawfully charge a fee based upon the difference between its former capitalization and the present one. *United Missouri Power Co. v. Yoder*, 41 Mont. 245, 248, 108 Pac. 912.

§ 178a. Duplicate Warrants to be Issued by State Auditor.

The state auditor is hereby empowered and authorized to issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state of Montana shall have been lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate," and no such warrant shall be issued or delivered by the state auditor except the person entitled to receive the same shall deposit with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save the state of Montana, and its officers harmless on account of the issuance of said duplicate warrant. [Approved February 16, 1909; Laws 1909, c. 19, p. 21.]

§ 178b. Commissioner of Insurance—Deputy—Actuary.

(Section 1.) The state auditor, in addition to his present title, shall be hereafter designated as commissioner of insurance, ex-officio. He shall appoint a deputy in addition to the deputy state auditor provided for in section 143, Revised Codes of Montana of 1907, who shall have same authority and powers granted by said section, and, in addition thereto, be known as deputy commissioner of insurance, and shall be in charge of the department of insurance in the said auditor's office under the direction and control of said state auditor and commissioner of insurance ex officio, provided, that nothing herein contained shall be construed to authorize an increase of the number of employees in said office, and the office of insurance clerk is hereby abolished.

(Section 2.) Said deputy authorized by this act shall receive a salary of twenty-one hundred (\$2100) dollars per annum.

(Section 3.) The state auditor and commissioner of insurance, *ex officio*, may employ an actuary when required, who shall be experienced and skilled in insurance matters and fully competent to perform any actuarial duties of the insurance department, and to assist in or take charge of the examination of insurance companies under the general direction of the commissioner or his deputy. [Approved February 13, 1909; Laws 1909, c. 12, p. 11.]

§ 178c. Commissioner of Insurance to Examine Affairs of Insurance Companies Being Organized.

The commissioner of insurance shall, as often as he deems it expedient, examine into the affairs of any corporation organized under any law of this state or having an office in this state, which corporation is engaged in, or is claiming or advertising that it is engaged in organizing or receiving subscriptions for, or disposing of stock of, or in any manner aiding or taking part in the formation or business of, an insurance corporation or corporations, or which is holding the capital stock of one or more insurance corporations, for the purpose of controlling the management thereof as voting trustee or otherwise. For such purpose he may appoint as examiners one or more competent persons not officers of, or connected with or interested in any insurance corporation other than as policy-holders; and upon such examination he, his deputy or any examiner authorized by him may examine under oath the officers and agents of such corporation and all persons deemed to have material information regarding the company's property or business. Every such corporation, its officers and agents, shall produce its books and all papers in its or their possession relating to its business or affairs, and any other person may be required to produce any book or paper in his custody deemed to be relevant to the examination, for the inspection of the commissioner, his deputies or examiners, whenever required, and the officers and agents of such corporation shall facilitate such examination and aid the examiner in making the same so far as it is in their power to do so. Every such examiner shall make a full and true report of every examination made by him, verified by his oath, which shall comprise only facts appearing upon the books, papers, records or documents of such corporation, or ascertained from the testimony, sworn to, of its officers or agents or other persons examined under oath concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts so disclosed and said report so verified, shall be presumptive evidence in any action or proceeding in the name of the people against the corporation, its officers or agents, of the facts stated therein. The commissioner shall grant a hearing to the corporation examined before filing any such report; and may, if he deems it for the interest of the public to do so, publish any such examination as contained therein in one or more newspapers of the state. [Approved February 7, 1911; Laws 1911, c. 12, p. 15.]

§ 178d. Chief Clerk of Auditor and Commissioner of Insurance.

The state auditor and commissioner of insurance *ex officio* is hereby authorized and empowered to appoint a chief clerk, at a salary of eighteen hundred dollars per year, payable monthly; providing that nothing herein contained shall be construed to authorize an increase of the number of employees in said office at this time. [Approved March 18, 1913; Laws 1913, c. 130, p. 481.]

§ 192a. Stenographer for State Treasurer.

That the state treasurer be, and he is hereby, authorized and empowered to appoint a stenographer, at a salary of twelve hundred dollars per year, payable monthly. [Approved February 5, 1909; Laws 1909, c. 5, p. 7.]

§ 192b. State Depository Board—Funds in Hands of State Treasurer.

The state depository board shall designate as depositories as many banks within the state as in its judgment are necessary for the safekeeping of the public moneys in the hands of the state treasurer, as hereinafter directed; provided, that all banks so designated shall undertake and agree, as a condition precedent to the deposit of any funds in such bank, that interest shall be paid upon the daily balances of all such deposits at a rate prescribed by the said board which shall not be less than two and one-half per cent per annum, and all deposits shall be adequately and properly secured to the treasurer as herein specified. No deposits shall be made of state funds by said depository board, nor by the state treasurer under the direction of said board, unless such bank shall first have delivered to the state treasurer as security thereof bonds of the United States, or of the state of Montana, or county, school or municipal bonds, in at least an amount equivalent to the amount of such deposit, or the bond of some good surety company authorized to do business in the state of Montana in at least the amount of such deposit, which bonds, or security, shall first be approved by the state depository board; provided, that the state depository board may require security in a greater amount than that above named. No deposit of said funds shall be made or permitted to remain in any bank unless such bank shall have first been designated as a depository by said state board, nor until the security for the deposit shall have first been deposited with the treasurer and been approved by the state depository board. In designating the depositories for state funds, the state depository board shall, as near as may be found practicable, make designation of depositories in the respective counties of the state, and cause to be deposited in them, public funds proportionate to the amount of public revenue received from such counties by the state. All interest paid and collected on deposits shall be by the state treasurer credited to the general fund of the state. The state depository board shall have the power of directing the withdrawal by the state treasurer of all moneys from any bank for any reason. When moneys shall have been deposited, under the direction of said depository board, and in accordance with the law, the treasurer shall not be liable for loss on account of any such deposit occurring through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct. It shall be the duty of the state treasurer to deposit funds in such banks, and in such amounts, as may be designated by the state depository board, and to withdraw such deposits when instructed so to do by the said board; provided, that the state treasurer shall at all times keep a cash reserve in state depositories provided for by this act, of at least fifteen per cent (15%) of all state funds, and no permanent investment shall be permitted which will in any manner impair said reserve. But such treasurer shall have the authority, either with or without the direction of said state board, to withdraw all of such deposits, or any part thereof, from time to time, to pay discharge the legal obligations of the

state duly presented to him in accordance with the law, except as above. Nothing herein shall be construed as limiting or impairing the right of the state board of land commissioners to invest public moneys in bonds or other securities as otherwise provided by law. [Approved March 9, 1909; Laws 1909, c. 129, p. 184.]

See p. 16, ante.

§ 194. Salary of Attorney General.

The annual salary of the Attorney General of the state of Montana, to include all services rendered ex officio as member of any board or commission, as now required, or which may be hereafter devolved upon him by law, is four thousand five hundred dollars (\$4,500). [Amendment approved March 5, 1915; Laws 1915, p. 105.]

§ 196. Assistants to Attorney General.

The Attorney General of the state of Montana is hereby authorized to appoint three Assistant Attorneys General, who shall receive as salary the sum of three thousand dollars (\$3,000) per annum, and shall hold such appointments during the pleasure of the Attorney General making such appointments. [Amendment approved March 5, 1915; Laws 1915, p. 104.]

§ 198. Law Clerk and Stenographer.

The Attorney General is hereby authorized to appoint a law clerk and stenographer, who shall receive as salary the sum of two thousand one hundred dollars (\$2100) per annum, and shall hold such appointment during the pleasure of the Attorney General making such appointment. [Amendment approved March 5, 1915; Laws 1915, p. 104.]

§ 199. Additional Stenographer.

The Attorney General is hereby authorized to appoint an additional stenographer at a salary of twelve hundred dollars (\$1,200) per annum, when in his judgment the work devolving upon his office and the public service seem to require such appointment. [Amendment approved March 5, 1915; Laws 1915, p. 104.]

STATE EXAMINER.

§ 213. Salary and Expenses of State Examiner.

The salary of the state examiner for all services rendered in any capacity whatever shall be three thousand dollars per year, and in addition thereto the state shall pay the necessary office and traveling expenses of himself and assistants. [Amendment approved March 4, 1911; Laws 1911, p. 162.]

§ 214. Assistants to State Examiner.

The state examiner shall be allowed one first assistant at a salary of two thousand four hundred dollars per year; and one second assistant at a salary of two thousand one hundred dollars per year; one deputy at a salary of eighteen hundred dollars per year; and one clerk at a salary of twelve hundred dollars per year; provided, that if at this session there is enacted a law placing private banks under the supervision of the state examiner, there shall be allowed an additional deputy at a salary of eighteen hundred dollars per year and expense money as may be included in the general appropriation bill. [Amendment approved March 4, 1911; Laws 1911, p. 162.]

§ 217a. State Examiner to Have Access to Accounts of Public Officers.

The state examiner shall have full power and authority to count the cash, verify the bank accounts and verify any and all accounts of any public officer, whose accounts he is examining, pursuant to law.

Any state, county, city or school district officer who shall refuse to accord the state examiner access, during an examination of such officer's accounts, to his cash, bank accounts, or any of the paper, vouchers, or records of his office, shall be immediately suspended from office.

The Attorney General shall, upon information furnished by the State Examiner, institute such proceedings or action which may be necessary to enforce the provisions of this act. [Approved March 5, 1915; Laws 1915, c. 84, p. 110.]

§ 217b. Examination of Books of Cities, Towns, and School Districts.

(Section 1.) The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty to make at least one examination each year of the books and accounts of all incorporated cities and towns, and the books and accounts of all school districts of the first and second class, in like manner as is now required by law for the examination of the books and accounts of state and county officers. [Approved March 13, 1913; Laws 1913, c. 84, p. 365.]

§ 217c. Laws Applicable to Such Examination.

(Section 2.) All laws now in force relative to the examination of the books and accounts of state and county officers, are, and the same are hereby declared to be applicable to the examination of the books and accounts of incorporated cities and towns, and to the books and accounts of school districts of the first and second class. [Approved March 13, 1913; Laws 1913, c. 84, p. 366.]

§ 217d. Amounts to be Paid by Municipality into Examiner's Fund.

(Section 3.) Cities and towns shall pay into the fund known in the law as the "State Examiners' Fund," on or before the first day of November of each year the following amounts:

Cities of the first class.....	\$150.00
Cities of the second class.....	100.00
Cities of the third class.....	50.00
Towns having a population of 700 or more.....	25.00
Towns having a population of less than 700.....	10.00

The state examiner shall examine the books and accounts of the school districts of the first and second class upon receiving a request signed by a majority of the board of trustees of such district; said school districts upon making a request for such examination shall pay into the state examiners' fund the following amounts:

School districts of the first class.....	\$100.00
School districts of the second class.....	25.00

[Amendment approved March 5, 1915; Laws 1915, c. 73, p. 99.]

§ 217e. Additional Deputy and Assistant.

(Section 4.) The state examiner is hereby empowered to appoint an additional deputy at a salary of eighteen hundred (\$1,800) dollars per annum and necessary traveling expenses, in the event, however, that it should

become necessary to employ an assistant to such additional deputy examiner, to perform the duties provided for in this act, the state board of examiners may authorize the employment of such assistant at a salary of one hundred fifty (\$150) dollars per month, and necessary traveling expenses. [Approved March 13, 1913; Laws 1913, c. 84, p. 366.]

§ 217f. Appropriation.

(Section 5.) There is appropriated out of the general fund the sum of five thousand (\$5,000) dollars, or such part thereof as may be necessary, for the year 1913, and the sum of five thousand (\$5,000) dollars, or such part thereof as may be necessary for the year 1914, for the purpose of carrying out the provisions of this act. [Approved March 13, 1913; Laws 1913, c. 84, p. 366.]

WEIGHTS AND MEASURES.

§ 225a. State Sealer of Weights and Measures—Deputies.*

(Section 1.) The Secretary of State is hereby declared to be and is the ex-officio state sealer of weights and measures. The sealers of weights and measures of each municipal corporation are hereby declared to be deputy sealers of weights and measures of their respective municipal corporations. All deputy sealers of weights and measures shall receive no compensation other than such as may be provided by law and shall be paid by the municipal corporation of which they are such officers. [Approved March 13, 1913; Laws 1913, c. 83, p. 351.]

§ 225b. Authority and Duties of Sealer—Inspectors—Municipal Deputy Sealer.

(Section 2.) (a) The state sealer of weights and measures shall have full authority and supervision over all inspectors of weights and measures hereafter appointed under this act and all deputy sealers of weights and measures appointed as such, by any municipal corporation within the state. Said state sealer of weights and measures shall have general supervision over all the weights and measures of the state. He shall take charge of the standards of weights and measures and shall procure at the expense of the state any weights and measures that may be necessary and shall cause them to be kept and in no case removed from a fire-proof vault in his office except for the purpose of certification or repairs. He shall maintain said standards in good order and shall submit them once in ten years to the national bureau of standards for certification. He shall correct the standards of the several counties, cities and towns as often as he may deem necessary and at least as often as once in five years and where not otherwise provided by law, he shall have general supervision of the weights and measures or measuring and weighing devices of the state in use in the state.

(b) The state sealer of weights and measures shall have authority to create weights and measures districts, comprising and consisting of two or more counties contiguous to each other, whenever in his judgment the operation or enforcement of the weights and measures law will be subserved thereby. The sealer of weights and measures shall be and is hereby given authority to appoint a qualified person to act and serve as the inspector of weights and measures in each of said districts. The inspectors of weights and measures shall each receive a salary of \$125 per month and

*Sections 219 to 225 of the Revised Codes and measures and do not seem to have been of 1907 also deal with the subject of weights expressly repealed.

all necessary expenses incurred in performing the duties of their office, which said salary and expense shall be charged against the said district, to be paid pro rata by each of the several counties, comprising such districts; provided that the said state sealer of weights and measures shall be and is hereby given the authority to transfer the inspectors of weights and measures from any one district created under the provisions of this act, to any other district so created; provided, that the county within which the inspector of weights and measures for a particular district has his residence shall pay and advance the salary and expenses of the said inspector for the said district each month, and the county advancing such salary and expense shall be reimbursed, pro rata, by the other county or counties comprising such district, upon the presentation of the claim, accompanied by the sworn statement from the county clerk of the county so paying and advancing such salary and expense.

(c) The boards of county commissioners of any two or more adjoining and contiguous counties may apply to the state sealer of weights and measures to create from such adjoining and contiguous counties a weights and measures district, where no such district has been previously created from such adjoining and contiguous counties, or any of them; and it shall be the duty of the state sealer of weights and measures to create such weights and measures district, if in his judgment the operation and enforcement of the weights and measures law will thereby not be impaired or retarded.

(d) The state sealer of weights and measures shall be and he hereby is empowered to order and direct the removal of any municipal deputy sealer of weights and measures or any inspector of weights and measures; and the said sealer of weights and measures may, in his discretion, put in charge of the inspector of weights and measures for the district in which any municipal corporation exists, having a deputy sealer of weights and measures, the work to be performed by the said deputy sealer of weights and measures, whenever in his judgment the operation of the weights and measures law will be better enforced. [Approved March 13, 1913; Laws 1913, c. 83, p. 351.]

Editorial Notes.

Validity of legislation for prevention

of fraud in weights and measures.
Ann. Cas. 1912C, 251.

§ 225c. State Deputy Sealer—Salary, Expenses and Accounts.

(Section 3.) The Secretary of State as ex-officio state sealer of weights and measures is hereby authorized to appoint one state deputy sealer of weights and measures, which said state deputy sealer of weights and measures shall receive a salary of \$150 per month and all the necessary expenses incurred in the conduct of the duties of his office. The said state deputy sealer of weights and measures shall be the chief of the department of the weights and measures, under the direction and control of the Secretary of State as sealer of weights and measures ex officio. The state deputy sealer of weights and measures and the inspectors of weights and measures under his supervision, shall have authority to do and perform any and all acts by this act authorized. All bills and accounts of expense incurred by the state deputy sealer of weights and measures and by the inspectors of weights and measures shall be presented to and allowed by the state board of examiners, in the same manner as provided for other claims, contracted for and in behalf of the state of Montana. [Approved March 13, 1913; Laws 1913, c. 83, p. 353.]

§ 225d. Inspection of Weights and Measures in Various Parts of State.

(Section 4.) Said state sealer of weights and measures or his inspectors, shall visit the various counties, cities and towns in the state and in the performance of his duties, he, or his inspectors, may inspect weights and measures and balances which are used for buying or selling goods, wares, merchandise or other commodities and for public weighing, and shall upon a written request of any citizen, firm or corporation or educational institution of the state, test or calibrate weights and measures, weighing devices or apparatus used as test standards in the state. He or his inspectors shall at least once annually test all scales, weights and measures used in checking the receipts or disbursements of supplies of every state institution and he shall report in writing his findings to the executive officer of the institution concerned. [Approved March 13, 1913; Laws 1913, c. 83, p. 353.]

§ 225e. Issuance of Certificate to be Attached to Weights and Measures.

(Section 5.) The state sealer of weights and measures or the state deputy sealer of weights and measures or inspectors of weights and measures, may in the discharge of their duties inspect weights and measures. It is hereby made the duty of the state sealer of weights and measures or his inspectors or the state deputy sealer of weights and measures, to at least once each year, inspect all weights and measures, balances, measuring or weighing devices of different kinds throughout the state of Montana. The state sealer of weights and measures shall prepare a certificate of suitable size to be attached or affixed to all weights or measures or measuring devices so tested. Said certificate shall bear a facsimile signature of the state sealer of weights and measures and shall be countersigned by the inspectors of weights and measures, or the state deputy sealer of weights and measures or such inspectors of weights and measures as may be designated by any municipal corporation. The certificate as prepared by the state sealer of weights and measures shall be numbered in consecutive order and shall have printed or stamped upon such certificate the year and shall be furnished to the inspector of weights and measures and to the sealer of weights and measures of any municipal corporation of the state, upon application therefor. The inspector of weights and measures of any municipal corporation shall pay to the state sealer of weights and measures for all such certificates so issued to him the sum equal to the actual cost of the number of certificates so received. [Approved March 13, 1913; Laws 1913, c. 83, p. 354.]

§ 225f. Penalty for Using Uncertified Weights and Measures.

(Section 6.) From and after the passage and approval of this act it shall be unlawful for any person or persons, firm or copartnership, corporation or association of persons engaged in the trade of buying or selling, purchasing or disposing of or dealing in any merchandise or commodities to any person or persons in the state of Montana to sell or purchase by weight or by measure, without first having had the weights and measures, scales or measuring devices used by them for the purpose of determining the amount or quantity of any article or articles of merchandise, tested and a certification attached thereto by the state sealer of weights and measures or by inspectors of weights and measures or by sealers of weights and measures appointed by any municipal corporation in the state of Montana.

Such certificate shall be attached or placed in a conspicuous place upon such weighing or measuring device. Any person or persons using any weight or measure or scale or other measuring device after the passage and approval of this act, or annually thereafter, which has not been tested as provided by this act, shall, upon conviction thereof, be deemed guilty of a misdemeanor and fined in the sum of not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300). Any person or persons who shall be deemed guilty of a second offense as provided in this act, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) and each and every successive day any person or persons shall so use any weights and measures, scales or other measuring devices shall be and is hereby declared to be a separate and distinct offense. [Approved March 13, 1913; Laws 1913, c. 83, p. 354.]

§ 225g. Duty of Owners to Have Weights and Measures Adjusted Annually.

(Section 7.) Every person or persons, firm, copartnership or corporation engaged in the trade of buying and selling or as a public weigher or user of weights and measures, shall between the first day of January and the first day of March of each year, have his weights, measures, balances and scales adjusted and sealed, and it is hereby made the duty of the inspector of weights and measures of the various districts of the state to examine and adjust all measures, balances and scales used by persons within district engaged in buying, selling or as public weigher or users of weights and measures. [Approved March 13, 1913; Laws 1913, c. 83, p. 355.]

§ 225h. Duty of Sealers and Inspectors to Adjust and Seal Scales and Balances.

(Section 8.) After the first day of March of each year, the sealer of weights and measures, or his inspectors or the deputy sealer of weights and measures shall visit the places of business and enter upon the carts, wagons or vehicles then in use for the business of all persons engaged in the trade of buying and selling, or selling who have weights, measures or balances which have not been sealed during the current year and try, adjust and seal the same. He shall at least once every six months try, adjust and seal every hay scale, wagon scale, railroad track scale or platform scale or balances used in the trade of buying and selling or for public weighing. [Approved March 13, 1913; Laws 1913, c. 83, p. 355.]

§ 225i. Power of Sealers and Inspectors to Test and Correct Weights, Scales and Measures.

(Section 9.) The state sealer of weights and measures, the deputy state sealer, or his inspectors of weights and (and) measures or municipal sealer of weights and measures shall have power to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of any kind, instrument or mechanical devices for measurement, and the tools, appliances or accessories connected with any or all of such instruments or measurements used or employed within the state by a proprietor, agent, lessee, or employee in determining the size, quantity, extent, area or measurement of quantities, things, produce, articles for distribution or consumption offered or submitted by such person or persons for sale, hire, or award. Provided, also, that the state sealer of weights and measures,

or his deputy, or his inspectors or any municipal sealer of weights and measures shall, at least once a year and as often as may be deemed necessary, try and prove all computing scales and other devices having a device for indicating or registering the price as well as the weight of the commodity offered for sale. Computing devices, which may be used by any person at any place within this state shall be tested as to the correctness of both weight and arithmetical values indicated by them. [Approved March 13, 1913; Laws 1913, c. 83, p. 356.]

§ 225j. Power to Test Commodities for Correct Weight or Measure.

(Section 10.) The sealer of weights and measures, his deputy or his inspectors or municipal sealer of weights and measures may at irregular intervals examine all commodities sold and offered for sale and test them for correct weight, measure or count. He, his deputy, or his inspectors or municipal sealers may, for the purposes above mentioned, and in the general performance of their official duties, enter or go into or upon, with or without formal warrant, any stand, place, building or premises or may stop any vender, peddler, junk-dealer, coal-wagon, ice-wagon, or any dealer whatsoever, for the purpose of making the proper tests; and in the exercise of such duties they shall have full police power to enforce any and all reasonable measures for testing such weights and measures, and also in ascertaining whether false or short weights and measures are being given in any scales or transfer of articles of merchandise taking place within the state. Whenever the state sealer of weights and measures or his inspectors or deputies have reason to believe that any person or persons, or corporation is violating the provisions of this act or any act relating to weights and measures they shall submit the evidence to the properly constituted authority in the county in which such violation occurs, who shall thereupon prosecute the persons alleged to have violated the provisions of this act or any act relating to weights and measures, or such evidence may be submitted direct to the Attorney General of the state, who shall have authority to prosecute such persons in the proper county. [Approved March 13, 1913; Laws 1913, c. 83, p. 356.]

§ 225k. Track Scale of Carrier.

(Section 11.) (a) All track scales used by common carriers for the purpose of weighing freight in carload lots within this state shall be under the control and direction and jurisdiction of the state sealer of weights and measures and subject to inspection by him, his inspectors or deputy sealers of weights and measures.

(b) The state sealer of weights and measures, his inspector or his deputy sealers of weights and measures shall have power either on their own motion or on complaint being made to determine whether any such track scales are defective or inefficient, or whether the time, manner or method of using same is unreasonable, ineffective or unjust, and shall have power to condemn any such scale found to be defective or inefficient and prohibit the use of the same while in that condition, and to render such decision and to make such order, rule or regulation as may be deemed necessary or advisable.

(c) Any person or persons who shall knowingly and willfully sell, or direct, or permit any person or persons in his or their employ to sell any commodity or article of merchandise, and make or give any false or short

weight or measure, or any person or persons owning or keeping, or having charge of any scales or steelyards for the purpose of weighing livestock, hay, grain, coal, or other articles, who shall knowingly and willfully report any false or untrue weight, whereby any other person or persons may be defrauded or injured; such person or persons shall be fined in any sum not exceeding five hundred (\$500) dollars, or be imprisoned in the jail of the county not exceeding thirty days, at the discretion of the court, and also be answerable to the party defrauded or injured in double damages. [Approved March 13, 1913; Laws 1913, c. 83, p. 357.]

§ 225l. Weight or Measure to be Marked on Commodities Sold.

(Section 12.) From and after January 1, 1914, it shall be unlawful for any person or persons, association or corporation, to sell or offer for sale in this state, any commodity or article of merchandise in a package or container without having such package or container labelled in plain, intelligible words and figures, with a correct statement of the net weight, measure or numerical count of its contents; provided, that nothing in this section shall prevent the putting up of commodities or articles of merchandise which have been previously sold by net weight, measure or numerical count, into packages or containers for the purpose of delivering or transporting such commodities or articles of merchandise.

Provided, further, that nothing in this section shall apply to commodities or articles of merchandise, except milk and cream offered for sale or sold in packages or containers at a price of ten cents or less per such package.

(a) It shall be unlawful for any person to sell or offer for sale in this state any commodity or article of merchandise, except by true net weight, measure or numerical count, except where the parties otherwise agree. Contracts for work done, or for anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state, except where the parties have agreed upon any other calculations of measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights and measures aforesaid.

(b) It shall be unlawful for any person, in buying or selling any commodity or article of merchandise, to make or give false or short weight or measure, or to sell or offer for sale any commodity or article of merchandise less in weight or measure than he represents, or to use a weight, measure, balance or measuring device that is false and does not conform to the authorized standard for determining the quantity of any commodity or article of merchandise, or to have a weight, measure, balance or measuring device adjusted for the purpose of giving false or short weight or measure, or to use in buying or selling of any commodity or article of merchandise a computing scale or device indicating the weight and price of such commodity or article of merchandise upon which scale or device the graduations or indications are falsely or inaccurately placed either as to weight or price, or to use any computing scale having a horizontal registering bar with a barrel computing device, unless such scale is adjusted to register the correct weight from all angles of vision.

(c) Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in a court having jurisdiction of the offense, shall be fined in a sum not to exceed two

hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment, and any weight, measure, balance or measuring device which shall have been used by him in such violation shall be ordered confiscated and destroyed. He shall also be liable in damages to the party injured by his violation in treble the amount of the property wrongfully taken or not given and twenty dollars in addition thereto, to be recovered in a court of competent jurisdiction. The selling and delivery of any commodity or article of merchandise shall be prima facie evidence of the representation on the part of the vender, that the quantity sold and delivered was the quantity bought by the vendee. There shall be taken into consideration the usual and ordinary leakage, evaporation or waste that there may be from the time a package or container is filled by a vender until he sells the same. A slight variation from the stated weight, measure or quantity for individual packages not to exceed three per cent is permissible; provided, that the variation is as often above as below the weight, measure or quantity stated. [Approved March 13, 1913; Laws 1913, c. 83, p. 358.]

§ 225m. Record and Report of Work Done by Sealers and Inspectors.

(Section 13.) The state sealer of weights and measures shall keep a complete record of all work done under his direction and shall make an annual report not later than the first day of January of each year, preceding the meeting of the legislative assembly. The inspectors of weights and measures and all municipal sealers of weights and measures shall keep a complete record of all work done by them under and by direction of the state sealer of weights and measures and shall report to the state sealer of weights and measures, not later than the fifth of each month, of all work done by them for the preceding month. The state sealer of weights and measures shall provide a system of records to be kept by all inspectors of weights and measures and municipal sealers of weights and measures together with blank reports, upon which all reports of said inspectors and sealers of weights and measures are to be made. The form of record provided by the state sealer of weights and measures for all inspectors and municipal sealers of weights and measures shall be the form to be observed and kept by them and after the said state sealer of weights and measures shall have prescribed the form of said records, said records so kept by any municipal sealer shall be filed in the office of the city clerk of the municipal corporation and become a record of said state. [Approved March 13, 1913; Laws 1913, c. 83, p. 359.]

§ 225n. Stamping Weight or Measure Without Verifying It.

(Section 14.) Any person authorized to seal weights and measures in accordance with this act who shall, without duly verifying the weights and measures of any person by comparison with the standard of weights and measures, stamp a weight or measure or attach thereto a certificate that said weight or measure has been duly tested, is hereby declared, upon conviction thereof, to be guilty of a misdemeanor and shall be subject to a penalty of a fine of not less than fifty dollars (\$50) nor more than three hundred dollars (\$300). [Approved March 13, 1913; Laws 1913, c. 83, p. 360.]

§ 225o. Weights and Measures to be Marked on Top—Apothecaries' Weights and Measures.

(Section 15.) Every weight for use in trade, except when the small size of the weight renders it impracticable, shall have the denomination of

such weight permanently marked on the top side thereof in legible figures or letters; and every measure of capacity for use in trade shall have the denomination and kind thereof permanently marked on the outside of such measures in legible figures or letters. A weight or measure not in conformity with this section shall not be stamped by the state sealer of weights and measures or inspector of weights and measures or deputy sealers of weights and measures.

(a) Apothecaries and all other persons dealing in drugs, medicine and merchandise commonly sold by apothecaries' weight or by apothecaries' liquid measure shall at least once in two years cause such weights and measures so used to be tested and sealed by officers authorized under this act to inspect weights and measures. [Approved March 13, 1913; Laws 1913, c. 83, p. 360.]

§ 225p. Procedure Where Weight or Measure cannot be Adjusted Readily.

(Section 16.) If any weights, measures or balances can be readily adjusted by such means as the inspector or sealer of weights and measures may have at hand, he may adjust and seal them, but if they cannot be readily adjusted he shall affix to such weights, measures or balances, a notice forbidding their use until he is satisfied they have been so adjusted as to conform with the standard. Any person or persons who remove said notice without the consent of the officer affixing the same, shall upon conviction, be fined in a sum not to exceed fifty dollars (\$50). [Approved March 13, 1913; Laws 1913, c. 83, p. 361.]

§ 225q. Condemnation of Weights or Measures.

(Section 17.) All weights, measures and balances which cannot be made to conform to the standard weights and measures as herein provided shall have stamped "Condemned" or "C.D." by the sealer of weights and measures. [Approved March 13, 1913; Laws 1913, c. 83, p. 361.]

§ 225r. Seizure of Illegal Weights and Measures.

(Section 18.) The state sealer of weights and measures or inspector of weights and measures or deputy sealer of weights and measures, may seize without a warrant such weights, measures or balances as may be necessary to be used as evidence in case of violation of any act relative to the sealing of weights and measures. They shall be returned to the owners or forfeited as the court may direct. [Approved March 13, 1913; Laws 1913, c. 83, p. 361.]

§ 225s. Itinerant Peddlers.

(Section 19.) All itinerant peddlers and hawkers, using scales, balances, weights, or measures shall take the same to the office of the state sealer of weights and measures or inspector of weights and measures or deputy sealer of weights and measures, before any use is made thereof, and have the same sealed and adjusted annually; and any such person failing to comply with the provisions of this section shall be fined not less than five dollars (\$5) nor more than one hundred dollars (\$100) for each offense, and every day such person shall use such scales, balances, weights, or measures without having the same adjusted and sealed as hereinbefore provided for, shall constitute a separate and distinct offense. Any itinerant peddler or hawker found using any false scale shall be subject to a fine

of not less than ten dollars (\$10) nor more than fifty dollars (\$50) for each offense. [Approved March 13, 1913; Laws 1913, c. 83, p. 361.]

§ 225ss. Sale of Milk and Cream.

(Section 20.) All milk, cream, and skimmed milk shall be sold only by standard wine measure, and by or in measures, cans, jars, bottles, or other vessels or receptacles which shall, prior to being used in such scale, be sealed by the sealer of weights and measures of the town where the person so using the same shall usually reside in this state, or of the town where such milk shall be sold for use; and every person selling any of the same contrary to this section, or delivering any of the same sold contrary hereto, shall be fined for the first offense not less than fifty dollars (\$50) and not exceeding one hundred dollars (\$100) and for the subsequent offense not less than one hundred dollars (\$100) or imprisonment not to exceed ninety days, or both such fine and imprisonment. Any purchaser of milk, cream, or skimmed milk having reason to believe that any measure, can, jar, bottle or other vessel or receptacle in which milk, cream or skimmed milk is sold and delivered to him is not of sufficient size or capacity to contain, by standard wine measure, the amount thereof purchased may apply to the sealer of weights and measures, which sealer shall test the capacity of the same and issue to such purchaser his certificate stating the capacity thereof; and if such capacity according to such certificate shall be less than the amount purchased, such purchaser may make complaint and deliver such certificate to any officer authorized to make complaint for the violation of this act. [Approved March 13, 1913; Laws 1913, c. 83, p. 361.]

§ 225t. Capacity of Milk Receptacles and Marking Thereof.

(Section 21.) No person or corporation shall, after the passage of this act, sell or offer for sale within the state of Montana, any milk or cream in bottles or in glass jars unless each of said bottles or glass jars in which said milk or cream is sold or offered for sale shall have blown into it or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner the capacity thereof, and the state sealer of weights and measures or inspector of weights and measures or deputy sealer of weights and measures shall have the right at any time to examine any bottle or glass jar in which milk or cream is sold or offered for sale in the state of Montana or which is used by any person or corporation for the purpose of containing milk or cream to be sold or offered for sale in order to ascertain whether such bottle or jar is of a capacity not less than that which it purports to be; and if any such bottle or jar is of less capacity than that which it purports to be, or, if any such bottle or jar shall not have blown into it or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner its capacity as aforesaid, the person or corporation selling or offering for sale milk or cream in any such bottle or jar, or having in his possession any such bottle or jar to be used or which has been used for the purpose of containing milk or cream to be sold or offered for sale in said state of Montana shall, upon conviction, be fined not less than five dollars (\$5) nor more than one hundred dollars (\$100) for each offense; and each and every bottle or glass jar found in the possession of any person or corporation used or to be used, or which has been used by such person or corporation for the purpose of containing milk or cream to

be sold or offered for sale in the state of Montana, which shall be found to be of a less capacity than that blown into the same or otherwise so indelibly and permanently indicated thereon, or which shall not have blown into it or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner the capacity as aforesaid, shall constitute a separate and distinct offense on the part of such person or corporation, and upon conviction such person or corporation shall be fined in a sum not less than ten dollars (\$10) nor more than three hundred dollars (\$300). [Approved March 13, 1913; Laws 1913, c. 83, p. 362.]

§ 225tt. Use of False Weights or Measures.

(Section 22.) A person who uses, or has in his possession for use in trade, any weight, measure, scale, balance, steelyard, or weighing machine, which is false or incorrect shall be fined not more than one hundred dollars (\$100) or in case of a second offense, not more than two hundred dollars (\$200) and any contract for gain, deal or dealing made by the same shall be void and the weight, scale, measure, balance or steelyard shall be liable to be forfeited. [Approved March 13, 1913; Laws 1913, c. 83, p. 363.]

§ 225u. What Constitutes Legal Weights and Measures.

(Section 23.) A weight, or measure duly stamped by the state sealer of weights and measures or inspector of weights and measures or deputy sealer of weights and measures, or by the National Bureau of Standards shall be a legal weight or measure throughout the state, unless found to be false or incorrect and shall not be liable to be resealed because used in any other place than that in which it was originally stamped. [Approved March 13, 1913; Laws 1913, c. 83, p. 363.]

§ 225uu. Fraud in Sale of Commodities.

(Section 24.) Whoever sells or offers for sale a less quantity than represented, or sells in a manner contrary to law, shall be guilty of fraud, and shall be fined not more than one hundred dollars (\$100) or in case of a second offense, not more than two hundred dollars (\$200). [Approved March 13, 1913; Laws 1913, c. 83, p. 363.]

§ 225v. Tolerances and Their Establishment.

(Section 25.) The state sealer of weights and measures shall, after consultation with, and with the advice of the National Bureau of Standards, establish tolerances for use in the state of Montana, and said tolerances shall be the legal tolerances in the state of Montana. [Approved March 13, 1913; Laws 1913, c. 83, p. 364.]

§ 225vv. Refusal to Produce Weights and Measures for Inspection.

(Section 26.) A person who neglects or refuses to produce for the state sealer of weights and measures or inspectors of weights and measures or deputy sealer of weights and measures, all weights, measures or balance in his possession and used in trade, or on his premises, or refuses to permit the said officers to examine the same, or obstructs the entry of said officers, or otherwise obstructs or hinders any official under this law or violates any of the provisions of this act shall be fined not more than one hundred dollars (\$100) and in case of a second offense, not more than two hundred dollars (\$200). [Approved March 13, 1913; Laws 1913, c. 83, p. 364.]

§ 225w. Rules and Regulations for Inspectors and Sealers.

(Section 27.) The state sealer of weights and measures is hereby authorized to make and promulgate such rules and regulations for the government, guidance and direction of inspectors of weights and measures and deputy city sealers of weights and measures in conformity with this act, as may be necessary to carry out the provisions of this act in a uniform manner. Such rules and regulations when promulgated by the state sealer of weights and measures, with the approval of the Governor of the state of Montana indorsed thereon, shall have the same force and effect as if provided for in this act. Such rules and regulations shall be published at least once in a newspaper of general circulation in each county and city of the state of Montana. [Approved March 13, 1913; Laws 1913, c. 83, p. 364.]

§ 225x. Penalty for Violation of Law.

(Section 28.) Any person or persons violating any of the provisions of this act where no other penalty is provided shall upon conviction thereof be fined in a sum not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300) or by imprisonment in the county jail not less than thirty nor more than ninety days. [Approved March 13, 1913; Laws 1913, c. 83, p. 364.]

§ 225y. Authority of Sealers or Inspectors as Deputy Sheriffs.

(Section 29.) The state sealer of weights and measures, inspectors of weights and measures or sealer of weights and measures of the various cities, towns and counties, throughout the state shall be, by virtue of their respective offices, deputy sheriffs and as such shall have power to arrest and detain any person violating the provisions of this act, without warrant. [Approved March 13, 1913; Laws 1913, c. 83, p. 364.]

§ 225z. Collection and Distribution of Fines and Penalties.

(Section 30.) All fines collected for violation of the provisions of this act shall be paid to the state treasurer for support and maintenance of the department of weights and measures. All justices of the peace and clerks of district courts who may collect any fine imposed for the violation of the provisions of this act must, not later than the fifth day of each month, transmit to the state sealer of weights and measures, all moneys so collected and the state sealer of weights and measures shall pay the same quarterly to the state treasurer taking his receipt therefor. [Approved March 13, 1913; Laws 1913, c. 83, p. 365.]

§ 225zz. Repealing Clause.

(Section 31.) That chapter 34 of the laws of the Twelfth Legislative Assembly, 1911, be, and the same is, hereby repealed and that all acts and parts of acts in conflict herewith are hereby repealed.

(Section 32.) This act [§§ 225a-225zz herein] shall be in full force and effect from and after its passage and approval. [Approved March 13, 1913; Laws 1913, c. 83, p. 365.]

§ 226.

Both this section and article VII, section 20, of the Constitution, apply to unliquidated claims; they do not apply to those

claims the amounts of which have been fixed specifically by contract or by any department of the state government having authority to fix them. *State v. Cunningham*, 39 Mont. 165, 172, 101 Pac. 962.

§ 262.

Examination and approval of claims against the state. See note ante, § 226.

Claim for compensation, made by stenographer of supreme court. See note post, § 6248.

This section does not apply to the employees of the supreme court; that court,

viewed as a department of the state government, is neither an officer nor a board, and therefore does not fall within the provision concerning "clerical help for any state officer or board." *State v. Cunningham*, 39 Mont. 165, 172, 101 Pac. 962.

Cited, in discussing the power of a district judge to appoint attendants. *State v. Sullivan*, 48 Mont. 320, 331, 137 Pac. 392.

§ 270. Records of Grand Army of Republic.

(Section 1.) The Governor of the state of Montana is hereby authorized and directed to appoint a custodian of the records, mementoes, relics, documents and archives of the Grand Army of the Republic, and history of the residents of the state of Montana who served in the army, navy or marine corps of the United States during the Civil War. The Department Commander, Department of Montana of the Grand Army of the Republic, may recommend to the Governor a suitable person to be appointed as such custodian, provided that the person appointed as such custodian must be a member of the Grand Army of the Republic of the Department of Montana.

(Section 2.) The Governor and Secretary of State, are hereby authorized and directed to set apart a suitable room in the capitol building of the state of Montana, for the storing and safekeeping of such archives, records, etc., of the Grand Army of the Republic, and said room shall be suitably furnished, and shall be under the charge of the custodian so appointed.

(Section 3.) Said room shall be used by such custodian for the purpose of storing and exhibiting relics, mementoes, archives and documents of the Civil War, and for arranging and preserving the history of the residents of Montana who served in the army, navy or marine corps of the United States during the Civil War and any other literature which the Department of Montana of the Grand Army of the Republic may collect and desire to preserve as a part of the history of the state. Such records and exhibits shall be accessible at all times under suitable rules and regulations to all residents of this state, and other persons desirous of viewing such exhibits.

(Section 4.) All books, records, papers, relics, mementoes and histories and other effects of whatever nature applying to the Department of the Grand Army of the Republic and accorded space in this room, shall, whenever such department ceases to exist as a department of the Grand Army of the Republic, become the property of the state of Montana.

(Section 5.) The expense of collecting and maintaining such exhibits including the salary of the custodian herein provided shall not exceed the sum of twelve hundred (\$1200) dollars, in any one year, which shall be paid by the state treasurer, in the same manner as other expenses and salaries of the state departments, and employees or officers are paid.

(Section 6.) Section 270, Revised Codes of 1907, and chapter 32 of the Session Laws of the Thirteenth Legislative Assembly of the state of Montana and all acts and parts of acts in conflict herewith are hereby repealed. [Amendment approved March 8, 1915; Laws 1915, p. 218. Prior amendment: Laws 1913, p. 43.]

§§ 282-288.**LABOR, INDUSTRY AND AGRICULTURE.**

The department heretofore known as the Bureau of Agriculture, Labor and Industry has been abolished. See § 288y, post.

Section 288 was amended by the Twelfth Legislative Assembly. See Laws 1911, p. 19.

§ 288a. Reports of Commissioner of Bureau of Agriculture, Labor and Industry.*

(Section 1.) The commissioner of the bureau of agriculture, labor and industry shall prepare reports from the data, cuts and statistics on file in his office or submitted to him as hereinafter provided. Such reports shall furnish reliable information upon one or more of the following topics, to wit:

Upon the agricultural, commercial, mining, manufacturing, labor or other industrial resources of the state, or upon the educational and social interests or sanitary conditions of the people of the state.

Such reports shall be published in such form and quantity as in the judgment of the commissioner may be deemed expedient and practicable. Reports so prepared by the commissioner, or prepared and delivered to him as hereinafter provided, shall be by him sent to such parts of the United States as in the opinion of the commissioner would secure the greatest benefit, considering the character of the information contained in the report. All reports sent out by the commissioner shall bear a certificate thereon to the effect that the same are issued by authority of the state of Montana. The commissioner shall open correspondence with bureaus of emigration, boards of trade and other organizations in the United States who are willing to assist in disseminating information in regard to the climate, productive, commercial, industrial and labor resources of Montana. He shall also provide for a liberal distribution of such reports at state and country fairs throughout the United States, and at all expositions of a national character. To secure the distribution by the bureau of local advertising matter in the manner hereinafter provided, the manuscripts of all reports, pamphlets, and statistics so compiled must be submitted to the commissioner and approved by him. [Approved March 4, 1909; Laws 1909, c. 70, p. 91.]

§ 288b. Annual Statement of Accounts.

(Section 2.) The commissioner shall annually, on the 30th day of November, submit a complete itemized account to the Governor, showing all the business of the bureau for the year, and all expenditures made during such period. [Approved March 4, 1909; Laws 1909, c. 70, p. 92.]

§ 288c. Assistant Clerk for Commissioner.

(Section 3.) The commissioner shall have authority to appoint, in addition to the chief clerk now provided for by law, an assistant clerk at a salary of eighteen hundred dollars per annum, to be paid in the same manner as other salaries are paid. [Approved March 4, 1909; Laws 1909, c. 70, p. 92.]

§ 288d. Appropriation for Expenses.

(Section 4.) There shall be appropriated for the purposes of paying the expenses incurred under this act the sum of five thousand dollars for the year 1909 and five thousand dollars for the year 1910. [Approved March 4, 1909; Laws 1909, c. 70, p. 93.]

*The duties of the Commissioner of the Bureau of Agriculture, Labor and Industry are now imposed upon the Department of Labor and Industry. See § 288i, post.

And the department known as the Bureau

of Agriculture, Labor and Industry has been abolished. See § 288y, post. It would therefore seem that chapter 70 of the Laws of 1909, herein embraced in sections 288a-288i, is no longer in force.

§ 288e. Appropriations for Advertising Resources of County.

(Section 5.) The board of county commissioners of any county of the state, upon receiving a petition signed by at least fifty resident freehold taxpayers, whose names appear on the last assessment books of the county, is authorized to make an appropriation, as hereinafter provided, from the general fund of the county for the purpose of advertising the agricultural, commercial, mining, manufacturing, labor or other industrial resources of the county. Said petition shall specifically state the class or classes of industries of said county that the petitioners desire to advertise, and the appropriation shall be limited to the purposes stated in the petition.

Said appropriations shall not exceed the following amounts, to wit:

In counties of the first class, fifteen hundred dollars; counties of the second class, thirteen hundred dollars; counties of the third class, one thousand dollars; and all counties below the third class, eight hundred dollars. [Approved March 4, 1909; Laws 1909, c. 70, p. 93.]

§ 288f. Compilation and Distribution of Statistics.

(Section 6.) The board of county commissioners of counties where appropriations have been made in accordance with section 5 of this act, may appoint some suitable person to gather data and statistics, and compile and have printed pamphlets or folders of the size and character provided for in section one of this act. When so prepared, said pamphlets or folders may be sent to the commissioner of agriculture, labor and industry for the purpose of distribution by him in the manner provided for in section one of this act, and it shall be his duty to so distribute the same, provided he gives his approval thereof, as required by section one of this act. [Approved March 4, 1909; Laws 1909, c. 70, p. 93.]

§ 288g. Chamber of Commerce and Other Societies to Furnish Information for Distribution.

(Section 7.) Chambers of commerce, commercial clubs, farmers institutes, co-operative societies of farmers, state federated trade unions, and other industrial associations of promotive character are hereby authorized to furnish to the commissioner of the bureau of agriculture, labor and industry, pamphlets or folders of the size and character mentioned in section one of this act, for the purpose of distribution by him in the manner provided for in section one of this act, and it shall be his duty to so distribute the same; provided he gives his approval thereof, as required by section one of this act, and provided, further, that the commissioner of said bureau may require the society or association submitting matter for distribution to furnish the funds necessary to pay postage or express charges for distributing the same. [Approved March 4, 1909; Laws 1909, c. 70, p. 93.]

§ 288h. Designation of Localities to Which Advertising Matter be Sent.

(Section 8.) Counties, and the societies provided for in section 7 of this act, in sending matter to the said bureau for distribution may designate any specific locality, city or society to which they desire the same sent, otherwise the same shall be distributed by the commissioner in the manner provided in section one of this act. [Approved March 4, 1909; Laws 1909, c. 70, p. 94.]

§ 288i. Importation of Labor.

(Section 9.) The bureau of agriculture, labor and industry shall not be used by any country, society, association, person or corporation to aid

or further the importation of alien labor or laborers of any kind to work during industrial disputes between employer and employee, and nothing in this act shall be construed to permit, encourage or allow the importation of any laborers or employees under contract at any time. [Approved March 4, 1909; Laws 1909, c. 70, p. 94.]

§ 288j. Department of Labor and Industry—Members.

(Section 1.) That the Department of Labor and Industry of the state of Montana is hereby created, which shall consist of a commissioner, boiler inspector, inspector of mines and coal mine inspector and such deputies and employees as are now or may hereafter be authorized by law. [Approved March 4, 1913; Laws 1913, c. 55, p. 106.]

§ 288k. Appointment of Commissioner and Removal—Stenographer.

(Section 2.) The commissioners of labor and industry shall be appointed by the Governor, his term of office shall be four years and he may be removed by the Governor for incompetence, negligence or malfeasance in office. The commissioner shall execute an official bond in the penal sum of one thousand (\$1,000) dollars to be approved by the Governor, and to be filed with the state auditor. Such commissioner shall also and is hereby authorized to appoint one clerk who shall hold office at the pleasure of the commissioner. He is also authorized to employ one stenographer. [Approved March 4, 1913; Laws 1913, c. 55, p. 106.]

§ 288l. General Duties of Commissioner.

(Section 3.) The duties of the commissioner of labor and industry shall be to enforce the provisions of sections 1746 to and including section 1754 of the Revised Codes of the state of Montana, 1907, and to discharge the duties now imposed upon the commissioner of the bureau of agriculture, labor and industry relating thereto and to free employment offices within this state. [Approved March 4, 1913; Laws 1913, c. 55, p. 106.]

§ 288m. Annual Report of Commissioner.

(Section 4.) The commissioner shall collect, assort and arrange, systematize and present in an annual report to the Governor on or before the first day of December in each year, statistical details relating to all departments of labor and industry in the state of Montana. [Approved March 4, 1913; Laws 1913, c. 55, p. 160.]

§ 288n. Powers of Commissioner—Examination of Witnesses.

(Section 5.) The commissioner shall have the power to administer oaths, have and use a seal, with power, to examine witnesses under oath, to take depositions or cause the same to be taken by any one authorized to take depositions, and said commissioner may deputize any male citizen over the age of twenty-one years to serve subpoenas upon witnesses who shall be summoned in the same manner as witnesses before the district court, and any person or owner, operator, or lessee of any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine-shop or other establishment, any agent or employee of such owner, operator, manager or lessee, who shall refuse to said commissioner admission therein for the purpose of inspecting, or who shall when requested by him willfully neglect or refuse to furnish to him any statistics or other information relating to his lawful

duties, which may be in their possession or under their control, or who shall willfully neglect or refuse for thirty days to answer questions by circular or by personal application, or who shall knowingly answer such questions untruthfully or who shall refuse to obey any such subpoenas and give testimony according to the provisions of this act, shall for every such willful neglect or refusal be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than fifty (\$50) nor more than one hundred (\$100) dollars. Provided, that no witness shall be compelled to answer questions respecting his private affairs nor to go outside of his own county to give testimony. [Approved March 4, 1913; Laws 1913, c. 55, p. 106].

§ 288o. Office and Records to be Kept at Capitol—Payment of Salaries.

(Section 6.) The office of said commissioner shall be at the capitol of the state where all the books, records and statistics of the department shall be kept. The salaries and other expenses of the said office shall be paid by the state in the same manner as is provided by law for the payment of the salaries and expenses of other state officers. [Approved March 4, 1913; Laws 1913, c. 55, p. 106.]

§ 288p. Expenses Which may be Incurred.

(Section 7.) The commissioner may incur such expenses as are necessary in the discharge of the official duties of his department provided that such expenses shall not exceed the amount appropriated therefor in each year. [Approved March 4, 1913; Laws 1913, c. 55, p. 106.]

§ 288q. Salary of Commissioner and of Clerks and Stenographers.

(Section 8.) The commissioner shall receive an annual salary of twenty-five hundred (\$2,500) dollars, payable monthly; the clerk an annual salary of twenty-one hundred (\$2,100) dollars, payable monthly, and the stenographer an annual salary of twelve hundred (\$1,200) dollars, payable monthly. [Approved March 4, 1913; Laws 1913, c. 55, p. 106.]

§ 288r. Boiler Inspector, and Mine Inspectors.

(Section 9.) The state boiler inspector, the state inspector of mines and the state coal mine inspector, their deputies, assistants and employees shall be appointed in the manner and perform the duties now required by law and shall receive the same salaries as are now prescribed by law. [Approved March 4, 1913; Laws 1913, c. 55, p. 106.]

§ 288s. Reports to be Published in One Volume.

(Section 10.) Each of said officers provided for in this act shall make reports as now required by law and the provisions of this act. Such reports shall be combined in one volume and published biennially and shall contain such statistical and descriptive matter as shall be approved by the state board of examiners.

(Section 11.) This act [§§ 288a-288s herein] shall be in full force and effect from and after March 4, 1913.

(Section 12.) All acts and parts of acts in conflict with this act are hereby repealed. [Approved March 4, 1913; Laws 1913, c. 55, p. 106.]

§ 288t. Department of Agriculture and Publicity—Appointment of Commissioner.

(Section 1.) The Department of Agriculture and Publicity of the state of Montana be, and is, hereby created, whose executive officer shall be a

commissioner appointed by the Governor. The term of such commissioner shall be four years and he may be removed by the Governor for incompetence, negligence or malfeasance in office. The commissioner shall execute an official bond in the penal sum of one thousand dollars, to be approved by the Governor, and to be filed with the state auditor. [Approved March 4, 1913; Laws 1913, c. 56, p. 108.]

§ 288u. General Duties of Commissioner.

(Section 2.) The commissioner of agriculture and publicity shall discharge the duties now required of the commissioner of the Bureau of Agriculture, Labor, and Industry, as prescribed in and by virtue of the provisions of Chapter 70 of the Session Laws of the Eleventh Legislative Assembly of the state of Montana. [Approved March 4, 1913; Laws 1913, c. 56, p. 108.]

§ 288v. Clerk and Stenographer.

(Section 3.) Such commissioner shall have authority and is hereby authorized to appoint one clerk whose salary shall be two thousand one hundred dollars per annum, payable monthly, and one stenographer, whose salary shall be one thousand two hundred dollars, per annum, payable monthly. [Approved March 4, 1913; Laws 1913, c. 56, p. 108.]

§ 288w. Officers and Records.

(Section 4.) The commissioner shall keep his office at the capitol of the state where the books, records, and statistics of his department shall be kept. His salary and other expenses of the said office shall be paid by the state in the same manner as is provided by law for the payment of the salaries and expenses of other state officers. [Approved March 4, 1913; Laws 1913, c. 56, p. 108.]

§ 288x. Salary of Commissioner.

(Section 5.) The salary of the commissioner of agriculture and publicity is hereby fixed at the sum of two thousand five hundred dollars per annum, payable monthly. [Approved March 4, 1913; Laws 1913, c. 56, p. 108.]

§ 288y. Abolition of Bureau of Agricultural and Labor.

(Section 6.) The department heretofore created by law known as the Bureau of Agriculture, Labor and Industry, be, and the same is, hereby abolished.

(Section 7.) This act [§§ 288t-288y herein] shall take effect and be in full force from and after the fourth day of March, 1913.

(Section 8.) All acts and parts of acts, in conflict herewith, be, and the same are, hereby repealed. [Approved March 4, 1913; Laws 1913, c. 56, p. 108.]

COURT IN OTHER DISTRICT.

§ 294a. Expenses of Judges Holding Court in Other Counties.

(Section 1.) Each district judge of a judicial district, in this state, composed of more than one county, when, for the purpose of holding court and disposing of judicial business, he goes to a county of his judicial district, other than the county in which he resides, and therein holds court or transacts judicial business, shall be paid all of his actual and necessary expenses of transportation and living, incurred on account thereof, and all expenditures made therefor, from the time he leaves his place of residence until he returns thereto.

(Section 2.) Twice a year, on the first days of January and July of each year or within three days thereafter, such district judge who may desire to avail himself of the provisions of this act shall make out an itemized claim against the state of Montana, showing, with dates and particulars, all moneys by him within the last preceding six months paid out and expended for and on account of such expenses; and shall verify such claim by making thereon or appending thereto his sworn affidavit that the items of the claim are true and correct and are wholly unpaid and that the expenditures therein enumerated were actually and necessarily made in the discharge of official business while away from home. He shall then file such claim with the clerk of the state board of examiners. At the first meeting of the board thereafter, the state board of examiners shall allow such claim, if properly verified, as above provided, and order a warrant drawn in payment thereof and the state auditor shall thereupon and in pursuance thereof draw and issue a warrant of the state of Montana in payment of such claim and forward the same to the claimant and take a receipt therefor. [Approved March 4, 1911; Laws 1911, c. 91, p. 159.]

§ 297. Salary and Expenses of Marshal of Supreme Court.

The annual salary of the marshal of the supreme court for all services now required, or which may hereafter be imposed upon him by law, is fifteen hundred (\$1,500) dollars. When serving process of court beyond the place where the court is held, in cases in which the state is not a party, the marshal is entitled to receive the same mileage as provided by law for sheriffs in performing similar services, to be taxed as costs, as in other cases. In cases in which the state is the real party in interest, he shall be entitled to receive only his actual expenses incurred in serving such process. [Amendment approved March 8, 1913; Laws 1913, p. 118.]

§ 305a. Attendant of Supreme Court Acting as Clerk.

Whenever the clerk of the supreme court is incapacitated or absent, the attendant of the supreme court is hereby authorized to perform all of the functions and duties of said clerk. [Approved February 14, 1913; Laws 1913, c. 20, p. 20.]

NOTARIES.

§ 317. Appointment of Notaries and Their Jurisdiction.

The Governor may appoint and commission as many notaries public for the state of Montana as in his judgment may be deemed best, whose jurisdiction shall be coextensive with the boundaries of the state, irrespective of their place of residence within the state. [Amendment approved March 6, 1909; Laws 1909, p. 140.]

§ 318. Citizenship and Residence of Notary.

Every person appointed as notary public, must, at the time of his appointment, be a citizen of the United States and of the state of Montana for at least one year preceding his appointment, and must continue to reside within the state of Montana. Removal from the state vacates his office and is equivalent to resignation. [Amendment approved March 6, 1909; Laws 1909, p. 140.]

§ 320. Duties of Notary.

It is the duty of a notary public:

(1.) When requested to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the

same for nonacceptance or nonpayment, and to exercise such other powers and duties as by the law of nations and according to commercial usages, or by the laws of any other state, government or country, may be performed by notaries, and keep a record of such acts.

(2.) To take the acknowledgment or proof of powers of attorneys, mortgages, deeds, grants, transfers and other instruments of writing executed by any person, and to give a certificate of such proof or acknowledgment, indorsed or attached to the instrument.

(3.) To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board in this state.

(4.) When request and upon payment of his fees therefor, to make and give a certified copy of any record in his office.

(5.) To provide and keep an official seal, upon which must be engraved the name of the state of Montana, and the words, "Notarial Seal," with the surname of the notary, and at least the initials of his Christian name.

(6.) To authenticate with his official seal all official acts. In all cases where the notary public signs his name officially as a notary public, he must add to his signature the words, notary public for the state of Montana, residing at . . . , (stating the name of his postoffice,) and must indorse upon the instrument the date of the expiration of his commission. [Amendment approved March 6, 1909; Laws 1909, p. 140.]

§ 320a. Jurisdiction of Notaries.

Every person receiving a commission as notary public shall have jurisdiction to perform his official duties and acts in every county of the state of Montana, and every notary now holding a commission from the Governor of the state of Montana shall have like jurisdiction. [Approved March 6, 1909; Laws 1909, p. 141.]

§ 325. Bond of Notary.

Each notary public must give an official bond in the sum of one thousand dollars, which bond must be approved by the Secretary of State. [Amendment approved March 6, 1909; Laws 1909, p. 141.]

§ 327. Certificate of Official Character by Secretary of State.

The Secretary of State may certify to the official character of such notary public, and any notary public may file a copy of his commission in the office of any county clerk of any county in the state, and thereafter said county clerk may certify to the official character of such notary public. [Amendment approved March 6, 1909; Laws 1909, p. 141.]

§ 328. Fees of Secretary of State and County Clerk for Filing Certificate.

The Secretary of State shall receive for each certificate of official character issued, with seal attached, the sum of one dollar. The county clerk of any county in this state, with whom a copy of notarial commission has been filed, shall receive for filing the same sum of fifty cents, and for each certificate of official character issued, with seal attached, the further sum of fifty cents. [Amendment approved March 6, 1909; Laws 1909, p. 142.]

§ 332a. Notaries Who are Stockholders or Officers of Corporations.

Be it enacted by the Legislative Assembly of the State of Montana:

That it shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation to take the

acknowledgment of any party to any written instrument executed to or by such corporation or to administer an oath to any other stockholder, director, officer, employee or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owed or held for collection by such bank or other corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such bank or other corporation, or to protest any negotiable instrument owned or held for collection by such bank or other corporation, where such notary is individually a party to such instrument. [Approved March 4, 1909; Laws 1909, c. 77, p. 107.]

Editorial Notes.

Stockholder or officer of corporation interested in instrument as disqualified to take acknowledgment thereof. Ann. Cas. 1913D, 373.

§ 355.

Limitation as to judicial officers. See note post, § 457.

The appointed incumbent of a public office must, as temporary locum tenens, perform the duties of the office until his successor has qualified. *State v. Kehoe*, 49 Mont. 582, 590, 144 Pac. 162.

Editorial Notes.

Right of incumbent of public office to retain office where successor elected or appointed is ineligible. Ann. Cas. 1913B, 677.

§ 362.

Removal of town officers. See note post, § 3236.

§ 371.

In a prosecution for purchasing evidences of indebtedness against the county contrary to this section, the evidence is held insufficient to sustain a conviction. *State v. Danzer*, 35 Mont. 269, 272, 88 Pac. 952.

An information charging one with being accessory to a county official in purchasing evidences of indebtedness against the county, which fails to allege that the defendant knew that the accessory was a county officer, is defective. *State v. Danzer*, 35 Mont. 269, 272, 88 Pac. 952.

§ 375.

Recovery of damages for usurpation of office. See note post, § 6959.

This section recognizes the principle that he who has the title to an office may receive the salary incident to it, whether he serves or not. *Peterson v. City of*

Butte, 44 Mont. 401, 410, Ann. Cas. 1913B, 538, 120 Pac. 483.

If a police officer has been wrongfully removed, but is reinstated, and sues for his salary during the time that the office has been withheld from him, the city is not entitled to have credited upon the plaintiff's claim for salary the amount earned by him in other employment during the time of his wrongful exclusion from office; his claim does not rest upon contract; he is not an employee, but an officer, and the salary is an incident to the office. *Wynne v. City of Butte*, 45 Mont. 417, 423, 123 Pac. 531.

A police officer, who has been wrongfully removed, may sue for his salary during the time that the office has been wrongfully withheld from him, without filing with the city a verified claim for the salary due him; the auditing statute, section 3288, post, does not have any reference to a claim for salary fixed by ordinance. *Wynne v. City of Butte*, 45 Mont. 417, 423, 123 Pac. 531.

If a police officer has been wrongfully removed from his office, but is afterward reinstated, and he sues for his salary during the time that he was wrongfully deprived of his office, it is no defense for the city, under this section, that the salary was paid to a de facto officer after the plaintiff had instituted proceedings in quo warranto. *Wynne v. City of Butte*, 45 Mont. 417, 422, 123 Pac. 531.

§ 376.

The failure of the clerk to perform his duty, in giving notice of contest, cannot operate to deprive a police officer of the salary attached to the office, from which he has been wrongfully excluded. *Wynne v. City of Butte*, 45 Mont. 417, 422, 123 Pac. 531.

§ 380.

The failure of the proper officers to approve an official bond does not invalidate it nor release the sureties from their liability upon it. *Deer Lodge County v.*

United States F. & G. Co., 42 Mont. 315, 328, Ann. Cas. 1912A, 1010, 112 Pac. 1060.

v. United States F. & G. Co., 42 Mont. 315, 325, Ann. Cas. 1912A, 1010, 112 Pac. 1060.

§ 384.

Failure of officers to approve. See note ante, § 380.

Action on county treasurer's bond. See note post, § 6445.

Where the statute authorizes the clerk of a district court and his deputies to issue certificates to persons who have served as jurors and witnesses, and the clerk has given a bond to the county for the faithful performance of his duties, any abuse of such authority, operating as an effective cause of loss to the county, is a lapse in the performance of duty for which the principal and the sureties on his bond are answerable; hence, if the chief deputy of the clerk issues spurious certificates, the clerk is clearly liable to the county, though the county treasurer was guilty of gross negligence in making payment, without which loss would not have occurred; a principal is answerable for the acts of his deputy, and the liability of one public officer, upon his bond, is not contingent upon the integrity of other public officers, nor upon the faithful performance by them of their official duties. *County of Silver Bow v. Davies*, 40 Mont. 418, 426, 429, 107 Pac. 81.

If a deputy clerk of a district court issues fraudulent jurors' certificates, none of which bear the imprint of the official seal, required by section 3179, post, and these certificates come into the hands of a bank, and are paid upon their presentation to the county treasurer; but the fraud is subsequently discovered, and the county recovers judgment against the surety company on the clerk's bond; whereupon the surety company pays the judgment and then seeks to be subrogated to the right that the county may have against the bank, it is necessary that something more be made to appear than that the bank can be made to repay to the county the amount it received upon the spurious certificates which it held; the surety company must show that, as between it and the bank, if either must suffer loss because of the clerk's peculations, the bank, in equity and good conscience, should be the one to lose; and, unless the complaint shows such facts, it does not state a cause of action. *American Bonding Co. v. State Sav. Bank*, 47 Mont. 332, 339, 46 L. R. A. (N. S.) 557, 133 Pac. 367.

The surety on an official bond, joint and several in character, is not released from liability because of the failure of the principal to sign the bond. *Deer Lodge County*

Editorial Notes.

Failure of principal to sign obligation as affecting liability of surety. Ann. Cas. 1912A, 1014.

Right of sureties of public officer, who made good a loss occasioned by their principal's default or misconduct, to be subrogated to the rights of the obligee or beneficiary of the bond, as against a third person. 46 L. R. A. (N. S.) 557.

Bonds of officers, informalities which do not invalidate. 15 Am. Dec. 170.

Bonds of officers, irregularities in which do not release sureties. 90 Am. St. Rep. 188.

Official bonds of officers, when valid and when void. 82 Am. Dec. 760.

Bonds of officers, failure of some of the named parties to execute. 40 Am. St. Rep. 51.

Liability on official bonds, receipts of officers as evidence against their sureties. 3 Am. St. Rep. 749.

Bonds of officers, successive, liability of sureties upon. 10 Am. St. Rep. 843.

Bonds of officers, trespasses of principal, liability of sureties on for. 78 Am. St. Rep. 420.

Bonds of officers, sureties on, acts for which liable. 91 Am. St. Rep. 497.

§ 389.

Failure of principal to sign, effect of. See note ante, § 384.

Failure of officers to approve, effect of. See note ante, § 380.

§ 393.

Construction of language borrowed from another state. See note ante, § 120.

The language of this section was borrowed from the California Political Code. *Deer Lodge County v. United States F. & G. Co.*, 42 Mont. 315, 328, Ann. Cas. 1912A, 1010, 112 Pac. 1060.

See editorial notes to § 384.

§ 398.

Liability of principal and sureties upon official bonds. See ante, § 384.

§ 416.

A county clerk may indemnify himself by requiring a bond of his deputy. *County of Silver Bow v. Davies*, 40 Mont. 418, 433, 107 Pac. 81.

§ 418a Surety Company Bond for Public Officers.

(Section 1.) No foreign or other surety company shall hereafter be permitted to furnish the bond for any state, county, or city official where

such company requires, in addition to the payment of reasonable premiums, any indemnity or other security.

(Section 2.) Whenever it shall appear to the satisfaction of the insurance commissioner that any surety company has violated the provisions of this act, its license shall be by him thereupon declared forfeited and such company shall not again be admitted to do business in this state until a period of four years shall have elapsed, nor until such company has shown a willingness to comply with the provision of this act.

(Section 3.) Whenever an official bond is required of any state, county, or city officer, such officer may furnish either a surety company bond, or a good and sufficient individual bond, executed and approved as required by law, or may furnish such other security as may be approved by the person, officer or board authorized by law to examine and approve such official bond provided that where such officer shall furnish a surety company bond, the premium therefor shall be a proper charge against the general fund of the state, county, or city, as the case may be. [Approved February 2, 1911; Laws 1911, c. 6, p. 10.]

§ 420.

Vacancy in office of clerk of district court. See note post, § 457.

Incompatible offices. See note post, § 3220.

Vacancy where new judgeship is created. See note post, § 6269.

This section is not exclusive as to events that create vacancies in office; where the governor is authorized to appoint an additional judge for a designated district. *State v. Lentz*, 50 Mont. 322, 146 Pac. 932.

Upon the approval of an act creating an additional judgeship for a designated county, there is ipso facto a vacancy in the office until it is filled by the Governor by appointment. *State v. Lentz*, 50 Mont. 322, 146 Pac. 932.

Where the incumbent of an office may vacate it by his own act, a resignation occurs upon his acceptance of another office incompatible therewith; and offices are "incompatible" when one has the power of removal over the other, or when the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both; thus, the offices of alderman and purchasing agent of a city, the latter office not having been created under sections 3216, 3217, or 3218, post, are incompatible. *State v. Wittmer*, 50 Mont. 22, 144 Pac. 648.

Editorial Notes.

Vacancy in office, what constitutes, 33 Am. Rep. 777.

Abandonment of public office, 113 Am. St. Rep. 516.

Vacancy in office by failure to file bond within time prescribed. 16 L. R. A. 140.

§ 450.

A general election is one held for the election of officers throughout the state. *State v. Kehoe*, 49 Mont. 582, 591, 144 Pac. 162.

Tenure of office must end on the date fixed by law. *State v. Kehoe*, 49 Mont. 582, 588, 144 Pac. 162.

§ 451.

Construction of section. See note post, § 455.

A special election is one held to supply a vacancy in a public office, or one in which is submitted to the electors a proposition to raise money for any public improvement. *State v. Kehoe*, 49 Mont. 582, 591, 144 Pac. 162.

§ 452.

The provisions of sections 452-455, relating to the manner of calling special elections to fill vacancies in county offices, while crude, are, nevertheless, sufficient for that purpose. *State v. Lentz*, 50 Mont. 322, 146 Pac. 932.

When this section is considered in connection with sections 453 and 6269, post, and with the provisions of the constitution, it is clear that the governor's proclamation should state the offices to be filled, especially where a state office, such as a judgeship, held by his appointee, is to be filled; but, if the people have actual notice that a judge is to be elected and indicate their choice, no insufficiency of notice, in the Governor's proclamation, of a vacancy in that office, in any particular district, or other informality in the election, will suffice to defeat their will, as expressed by their votes. *State v. Lentz*, 50 Mont. 322, 146 Pac. 932.

§ 453.

Amended by act of 1911 relative to choice of United States senators. See post, Election Statutes.

§ 455.

Governor's proclamation. See ante, § 453.

By this section and §§ 451 and 453, ante, the legislature intended to confer upon the several boards of county commissioners the power to call and provide for the holding of elections to fill vacancies in county offices. *State v. Kehoe*, 49 Mont. 582, 592, 144 Pac. 162.

The special elections referred to in this section are to fill vacancies in county offices; this section has no reference to elections held for raising money for public improvements, referred to in the latter part of section 451, ante; the power conferred in this behalf is exercised under special provisions on the subject, found in section 2933 et seq., post. *State v. Kehoe*, 49 Mont. 582, 592, 144 Pac. 162.

Where the general power to fill vacancies in county offices has been lodged by law in the various boards of county commissioners, it is their duty, when a vacancy occurs, to fill it, to prevent an interregnum in the office and the consequent suspension of the public business. *State v. Kehoe*, 49 Mont. 582, 590, 144 Pac. 162.

The legislature intended that special elections to fill vacancies in county offices should be proclaimed and notice thereof given by the board of county commissioners; apparently, a proclamation by the Governor is necessary only when an election is to be held to fill offices for the regular ensuing term, except to fill vacancies in the offices of state senator and member of the House of Representatives. *State v. Kehoe*, 49 Mont. 582, 591, 144 Pac. 162.

The notice of election does not take the place of the election proclamation. *Evers v. Hudson*, 36 Mont. 135, 154, 92 Pac. 462,

construing Laws of 1907, p. 50, relating to the establishment of county free high schools.

§ 457.

If there is a clause in the Constitution providing that an officer shall hold for a definite term and until his successor is elected and qualified, and the people fail to elect his successor, there is no vacancy, and he is entitled to hold over until the people have chosen his successor in the usual way; but, in the case of judicial officers, whose terms end at the expiration of a definitely fixed period, the words, "and until his successor is elected and qualified," refer to those officers only who were first elected after the adoption of the Constitution; they have no application to those chosen after such first election. *State v. Foster*, 39 Mont. 583, 590, 104 Pac. 860.

The provisions of the Constitution, fixing the terms of judicial officers are exclusive, and vacancies occur by operation of law upon the expiration of the terms designated, even where the people fail to elect their successors; hence, if, by reason of a tie vote, there is a failure to elect the successor of a clerk of a district court upon the expiration of the incumbent's term, there is a vacancy which the county commissioners are authorized, under this section, to fill by appointment. *State v. Foster*, 39 Mont. 583, 592, 104 Pac. 860.

Editorial Notes.

Qualifications for voters and for holders of office, power of the states to impose. 97 Am. Dec. 263.

§ 463.

See § 493, post.

Editorial Notes.

Acquiring residence as voter while attending school or public institution. 23 L. R. A. 215; 40 L. R. A. (N. S.) 168.

ELECTIONS.

§ 470. Registration of Electors—County Clerk as Registrar.*

(Section 1.) That chapter 113† of the laws of the legislative assembly of 1911 be amended so as to read as follows: The county clerk of each county of the state of Montana is hereby declared to be ex-officio county registrar of such county and shall perform all acts and duties in this act provided without extra pay or compensation therefor. He shall have the custody of all registration books, cards and papers herein provided for, and the register hereinafter provided for to be kept by said county clerk is hereby declared to be an official record of the office of the county clerk of each county. [Amended March 8, 1915; Laws 1915, c. 122, p. 263.]

*See note following § 493n.

†The law on this subject was also

amended in 1913: Laws 1913, c. 74, p. 170; repealed by § 493m, post.

§ 471. Establishment of Election Precincts by County Commissioners.

(Section 2.) The territorial unit for the conduct of elections shall be the election precinct. The board of county commissioners of each county shall establish a convenient number of election precincts therein, having reference to equalizing the number of electors in the several precincts as nearly as possible. Precinct boundaries shall conform to the boundaries of the wards of incorporated cities or towns and to the boundaries of school districts of the first class only, provided that any ward or school district may be divided into two or more precincts. [Amended March 8, 1915; Laws 1915, c. 122, p. 264.]

§ 472. Change in Boundaries of Precinct.

(Section 3.) The board of county commissioners may change the boundaries of precincts and create new or consolidate established precincts, but no precinct shall be changed or created between the first day of January and the first day of December in any year during which a general election is to be held within the state of Montana. All changes, alterations or modifications in precinct boundaries must be certified to the county clerk within three days after the order making same shall have been made. All election precincts shall be designated by numbers, but may also be designated by distinctive names in addition to such numbers. [Amended March 8, 1915; Laws 1915, c. 122, p. 264.]

§ 473. City Council to Certify Ward Boundaries.

(Section 4.) The city council of all incorporated cities and towns within the state of Montana shall certify to the county clerk and ex-officio registrar of the county within which such city or town is situated a description of the boundaries of the several wards within such city or town and in like manner shall certify any changes or alterations in such boundaries, that may from time to time be made, within ten days after the same are made. [Amended March 8, 1915; Laws 1915, c. 122, p. 264.]

§ 474. County Surveyor to Make Map of Precincts.

(Section 5.) The county surveyor of each county must within ten days after the board of county commissioners shall have established or changed the boundaries of any election precincts within such county deliver to the county clerk of the county a map correctly showing the boundaries of all precincts and school districts within the county as then existing. [Amended March 8, 1915; Laws 1915, c. 122, p. 264.]

§ 475. City Counsel to Prepare Map of Wards.

(Section 6.) The city council of any incorporated city or town shall within ten days after the ward lines of such city or town shall have been established or changed, deliver or cause to be delivered to the county clerk of said county a map correctly showing the boundaries of the wards within such city or town as then existing; such map shall also show all streets, avenues and alleys by name and the respective wards by numbers, with the ward boundaries clearly defined thereon. [Amended March 8, 1915; Laws 1915, c. 122, p. 264.]

§ 476. Registry Book and Card—Affidavit of Voter—Lost Naturalization Papers.

(Section 7.) The official register of electors in each county shall be contained in a book designated register which book shall be so arranged

in precincts and alphabetical divisions suitable to record the full and complete information given by each elector and a card index of which the county clerk of such county shall at all times have the custody. The cards shall be four by six inches in size, of white calendared stock, and shall be so perforated that all cards in any drawer may be fastened in by a rod passing through such perforations, which rod shall be kept locked except when the clerk shall be making necessary changes in the register. The registry book herein provided shall be in such form as shall be designated by the Secretary of State of the state of Montana. The registry card shall be substantially in the following form:

State of Montana,
County of.....

} ss.
(Face.)

.....
Number	Date	Name	Sex	
.....
Where born	Age	Height Ft.-In.	Occupation	
.....
Naturalized when		Where		
.....
Residence	Postoffice	Sec.	Twp.	Rg.
.....
Length of time in	Precinct	Ward	School Dist.	
.....
State	County	City		
.....
Date canceled	Date registered	Disability if any		
.....
Place where last registered				
.....

State of Montana,
County of.....

} ss.

...., being duly sworn says: I am the elector whose name appears on the face of this card; the several statements thereon contained affecting my qualifications as an elector are true; I am able to mark my ballot (or I am unable to mark my ballot by reason of the physical disabilities on this card specified) and I am not registered elsewhere within the state of Montana, and claim no right to vote elsewhere than in the precinct on this card specified, so help me God.

.....

Subscribed and sworn to before me this day of, 19..

.....

County Clerk and Ex-officio Registrar.
By, Deputy.

(Back.)

Affidavit of Lost Naturalization Papers.

State of Montana,
 County of..... } ss.

....., being duly sworn on oath, says: I am the elector named on the face of this card; I am a naturalized citizen of the United States; my certificate of naturalization is lost or destroyed, or beyond my present reach, and I have no certified copy thereof; I came to the United States in the year; I was admitted to citizenship in the state (or territory) of, county of, by the court during the year; I last saw my certificate of naturalization, or a certified copy thereof, at

Subscribed and sworn to before me this day of, 19...

.....
 County Clerk and Ex-officio Registrar.

By Deputy.

[Amended March 8, 1915; Laws 1915, c. 122, p. 265.]

See note following § 493n.

§ 477. Who may Register.

(Section 8.) Any elector residing within the county may register by appearing before the county clerk and ex-officio registrar and making correct answers to all questions propounded by the county clerk touching the items of information called for by such registry card and by signing and verifying the affidavit or affidavits on the back of such card. [Amended March 8, 1915; Laws 1915, c. 122, p. 266.]

§ 478. Persons Infirm or Distant from County Clerk's Office.

(Section 9.) If any elector resides more than ten miles distant from the office of the county clerk, he may register before the deputy registrar within the precinct where such elector resides. If by reason of physical infirmity the elector is unable to appear before the county clerk or any deputy registrar, he may send written notice to the county clerk, or to the deputy registrar, of such disability with the request that his registration be made at his residence. Upon receipt of such notice and request it shall be the duty of the county clerk or deputy registrar, as the case may be, to make the registration of such elector at his residence. Provided that no greater sum than twenty-five cents may be charged or received by any officer or person for taking the registration of the elector herein provided for; and provided further that no officer or person shall be entitled to receive from any county in the state of Montana any charge for expenses incurred by reason of the provisions of this section. [Amended March 8, 1915; Laws 1915, c. 122, p. 266.]

§ 479. Notaries and Justices as Registrars—Deputy Registrars.

(Section 10.) All notary publics and justices of the peace are hereby designated as deputy registrars for the purpose of carrying out the provisions of this act. The county clerk of each county may appoint a deputy registrar in each precinct of such county distant more than ten miles from the county courthouse wherein no justice of the peace or notary public resides. It shall be the duty of the deputy registrar to register

all electors within his precinct applying for registration, and for this purpose he shall have authority to demand of the elector all information and to administer all oaths required by this act. The deputy registrar shall be a resident elector within the precinct for which he is appointed, and shall receive as compensation for his services the sum of twenty-five cents for each elector registered by him. He shall forward within two days all registry cards filled out before him to the county clerk. [Amended March 8, 1915; Laws 1915, c. 122, p. 267.]

§ 480. Hours of Registration—Registry Cards—Duty of Clerk.

(Section 11.) The office of the county clerk shall be open for registration of voters between the hours of 9 A. M. and 5 P. M. on all days except legal holidays, registry cards shall be numbered consecutively in the order of their receipt at the office of the county clerk; provided, however, that electors who are registered upon the registry books in use in any county prior to the passage and approval of this law shall retain upon their registry cards the same number as they have severally had upon such books, and provided also that such electors need not again appear at the office of the county clerk to register, but the county clerk is hereby authorized to fill out from such registry books registry cards for all electors entitled to vote at the time of the passage and approval of this law, transcribing from such books the data called for by such cards. The cards so filled out from the registry books shall be marked "transcribed" by the county clerk, and shall constitute part of the official register, and shall entitle the elector represented by each such card to vote in the same manner as if the card had been filled out, signed and verified by such elector. The county clerk shall classify registry cards according to the precincts in which the several electors reside, and shall arrange the cards in each precinct in alphabetical order. The cards for each precinct shall be kept in a separate filing case or drawer which shall be marked with the number of the precinct. The county clerk shall, immediately after filling out the card index or registry cards as herein provided, enter upon the official register of the county in the proper precinct, the full information given by said elector. [Amended March 8, 1915; Laws 1915, c. 122, p. 267.]

§ 481. Applicant not Qualified at Time of Registration but at Time of Election—Naturalization Papers.

(Section 12.) If any applicant for registration applies to be registered who has not resided within the state of Montana, or the county or city for the required length of time, and who shall be entitled to and is qualified to register on or before the day of election, provided he answers the question of the county clerk in a satisfactory manner and it is made to appear to the county clerk that he will be entitled to become a qualified elector by the time upon which the election is to be held, the county clerk shall accept such registration. If any person applies to be registered who is not a citizen of the United States but states that he will be qualified to be registered as a citizen of the United States before the time upon which the election is to be held, the county clerk shall accept such registration, but shall [place] opposite the name of such person the words, "to be challenged for want of naturalization papers," and such person shall not be entitled to vote unless he exhibits to the judges of election his final naturalization papers. [Amended March 8, 1915; Laws 1915, c. 122, p. 268.]

§ 482. Transfer of Registration in Case of Change of Residence.

(Section 13.) Every elector on changing his residence from one precinct to another within the same county may cause his registry card to be transferred to the register of the precinct of his new residence by a request in writing to the county clerk of such county in the following form:

I, the undersigned, elector, having changed my residence from Precinct No. to Precinct No. in the county of, state of Montana, herewith make application to have my registry card transferred to the precinct register of the precinct of my present residence. My registration number is

Dated at on the day of, 19...

The county clerk shall compare the signature of the elector upon such request with the signature upon the registry card of the elector indicated, and may question the elector as to any of the information contained upon such registry card, and if the county clerk is satisfied concerning the identity of the elector and his right to have such transfer made, he shall indorse upon the registry card of such elector the date of the transfer and the precinct to which transferred and shall file said card in the register of the precinct of the elector's present residence, and the county clerk shall make transfers of elector's names together with all data connected therewith to the proper precinct in the register. [Amended March 8, 1915; Laws 1915, c. 122, p. 268.]

§ 483. Change of Residence to Another County—Procedure.

(Section 14.) If any elector registered as such in any county shall change his residence to another county in the state of Montana, he shall make and file with the county clerk of the latter county the following affidavit in duplicate, to wit:

State of Montana,
County of } ss.

I, the undersigned elector, being duly sworn on oath say:

I have heretofore registered as an elector in the state of Montana, county of, Precinct No., but on the day of, 19.. I moved my residence to the county of in said state and now reside at section township range Precinct No.; I occupy room No. of the building floor; I was born in and was naturalized as a citizen of the United States in

My height isft. in.

I request that I be registered to conform to my present address.

.....
Elector.

Subscribed and sworn to before me this day of, 19...

.....

Said affidavit may be sworn to before any officer authorized to administer oaths within the state of Montana. Upon filing such affidavit in duplicate with the county clerk, such elector shall fill out a registry card as herein provided for the original registration of voters and he shall thereupon be entitled to all of the rights of an elector in the precinct of his present residence, and such registry card shall be filed in the official registry of such precinct in the same manner as an original registry card.

Upon receiving the duplicate affidavits above referred to the county clerk shall file one in his own office and shall within two days thereafter

transmit the other to the county clerk of the county wherein said elector was previously registered. Upon the receipt of such duplicate affidavit by the county clerk of such other county, he shall transfer the registry card of the elector named in such affidavit to the canceled file of said county. Upon receiving the duplicate affidavit referred to in this section the county clerk shall cancel the name of such elector in the register herein provided for by drawing a line through said entry in red ink and by indorsing thereon the cause of said cancellation. [Amended March 8, 1915; Laws 1915, c. 122, p. 269.]

§ 484. Cancellation of Registry for Failure to Vote—Re-registration.

(Section 15.) Immediately after every general election the county clerk of each county shall compare the list of electors who have voted at such election in each precinct, as shown by the official poll book, with the official register of said precinct, and he shall remove from the official register herein provided for the registry cards of all electors who have failed to vote at such election, and shall mark each of said cards with the word "canceled," and shall place such canceled cards for the entire county in alphabetical order in a separate drawer to be known as the "canceled file," but any elector whose card is thus removed from the official register may re-register in the same manner as his original registration was made, and the registration card of any elector who thus re-registers shall be filed by the county clerk in the official register in the same manner as original registration cards are filed. The county clerk shall at the same time cancel, by drawing a red line through the entry thereof, the name of all such electors who have failed to vote at such election. [Amended March 8, 1915; Laws 1915, c. 122, p. 270.]

§ 485. Close of Registration—Procedure.

(Section 16.) The county clerk shall close all registration for the full period of thirty days prior to, and before any election. He shall immediately transmit to the Secretary of State, a certificate showing the number of voters registered, in each precinct in said county. The county clerk of each county must cause to be published in a newspaper within his county, having a general circulation therein, for thirty days before which time when such registration shall be closed for any election, a notice signed by him to the effect that such registration will be closed on the day provided by law, and which day shall be specified in such notice; and must also state that electors may register for the ensuing election by appearing before the county clerk at his office, or by appearing before a deputy registrar in the manner provided by law. The publication of such notice must continue for the full period of thirty days. At least thirty days before the time when the official register is closed for any election, the county clerk shall cause to be posted in at least five conspicuous places in each voting precinct at such election notice of the time when the official register will close for such election. [Amended March 8, 1915; Laws 1915, c. 122, p. 270.]

§ 486. List of Registered Electors—Printing and Posting.

(Section 17.) The county clerk shall at least ten days preceding any election, cause to be printed a list of all electors entitled to be registered and who are on the precinct registers as entitled to vote in the several

precincts of such county, city or town, or school district of the first class. Such printed list of registered electors shall contain the name of the elector in full, together with his residence and the registry number. The expense of printing said list shall be paid by the said county, city, town, or school district in which the election is to be held. The county clerk shall cause to be posted, not less than eight days before any such election as in this act provided for, at least five copies of such printed registry lists in at least five conspicuous places within the said precinct a copy of the list of registered voters, and shall retain a sufficient number of said printed lists of registered voters in his office as may be necessary. He shall furnish to any qualified elector of the city, town, school district or county, applying therefor, a copy of the same. [Amended March 8, 1915; Laws 1915, c. 122, p. 270.]

§ 487. Poll Book—Precincts Including More Than One County.

(Section 18.) During the time intervening between the closing of the official register and the day of the ensuing election, the county clerk shall prepare for each precinct a book to be known as the "poll book," which shall be for the use of the clerks and judges of election in each such precinct. Such books shall be arranged for the listing of the names of electors in alphabetical divisions, each division to be composed of ruled columns with appropriate headings under which the information contained upon the registry card of each elector shall be transcribed, excepting oath of elector and the certified copy of poll books so prepared shall be delivered to the judges of election at or prior to the opening of the polls in each precinct. Where the precincts in municipal elections, or in elections in school districts of the first class include more than one county precinct, the county clerk shall combine into one poll book the names of all electors in the several precinct registers of the precincts of which such municipal or school district precinct is composed. [Amended March 8, 1915; Laws 1915, c. 122, p. 271.]

§ 488. Registration During Period Closed for One Election.

(Section 19.) Whenever the period during which the official registry is closed preceding any election shall occur during the time within which any elector is entitled to register for another election, such elector shall be permitted to register for such other election, but the county clerk shall retain his registry card in a separate file until the official register is again open for filing of cards, at which time all cards in such temporary file shall be placed in their proper position in the official register. [Amended March 8, 1915; Laws 1915, c. 122, p. 271.]

§ 489. Cancellation of Registry Cards.

(Section 20.) The county clerk must cancel any registry card in the following cases:

1. At the request of the party registered.
2. When he has personal knowledge of the death or removal from the county of the person registered or when a duly authenticated certificate of the death of any elector is filed in his office.
3. When the insanity of the elector is legally established.
4. Upon the production of a certified copy of a final judgment of conviction of any elector of felony.

5. Upon the production of a certified copy of the judgment of any court directing the cancellation to be made. [Amended March 8, 1915; Laws 1915, c. 122, p. 271.]

§ 490. Compensation of County Clerks—Warrants.

(Section 21.) The county clerk shall receive, for the use and benefit of the county, from every city or town, or from every school district of the first class, to which the poll books referred to in the last section have been furnished, the sum of five cents for each and every name entered in such poll books, and in addition he shall receive in like manner the amount of the actual expense incurred in printing and posting the lists of electors, and in publishing the notices required by this law, and any other expense incurred on account of any such municipal or school district election. It shall be the duty of the city or town council, or board of school trustees, to order a warrant drawn for such sum as may be due to the county clerk under the provisions of this section within thirty days after the presentation of the account to them by said county clerk. [Amended March 8, 1915; Laws 1915, c. 122, p. 272.]

§ 491. Copies of Precinct Registers.

(Section 22.) The county clerk shall furnish to any person or persons who in writing may request a copy of the official precinct registers of any county, city, or school district precinct, and upon delivery thereof shall charge and collect for the use and benefit of the county the sum of five cents for each and every name entered in such official precinct register. [Amended March 8, 1915; Laws 1915, c. 122, p. 272.]

§ 492. Challenges—Procedure When Made.

(Section 23.) At any time not later than the 10th day prior to any election, a challenge may be filed with the county clerk, signed by a qualified elector in writing, and duly verified by the affidavit of the elector, that the elector designated therein is not entitled to register. Such affidavit shall state the grounds of challenge, objection and disqualification. The county clerk shall file the affidavit of challenge in his office as a record thereof. The county clerk must deliver a true and correct copy of any and all of such affidavits so filed, challenging the right of any elector to vote who has been so registered at the same time, and together with the copy of the precinct registers and check lists, and other papers required by this act to be delivered to the judges of election, as in this act provided, and he must write distinctly opposite to the name of any person to whose qualification as an elector objections may be thus made, the words, "To be challenged." It shall be the duty of the judges of election, if on election day, such person who has been objected and challenged applies to vote, to test, under oath, his qualifications. Notwithstanding the elector is registered, his right to vote may be challenged on the day of election by any qualified registered elector, orally stating, to the judges of election, the grounds of such objection or challenge to the right of any registered elector to vote.

It is the duty of the judges of election when it appears that any elector offers to vote and is either challenged by a duly qualified registered elector, on election day, or if an affidavit of objection to the right of such elector to vote has been filed with the county clerk and the copy of the precinct registers furnished to the judges of election have indorsed thereon, opposite

to the name of such elector: "To be challenged," to test the qualifications of the elector and ask any questions that such judges may deem proper, and shall compare the answers of the elector to such questions with the entries in the precinct register books, and if it be found that said elector is disqualified, or that the answers given by such elector, to the questions propounded by the judges, do not correspond to the entry in the precinct registers, or that said elector is disqualified from any cause under the law, or if he refuses to take an oath as to his qualifications, he shall not be permitted to vote. The judges of election, in their discretion, may require such elector to produce before them one or more freeholders of the county, as they may deem necessary, and have them examined under oath, as to the qualifications of the elector. [Amended March 8, 1915; Laws 1915, c. 122, p. 272.]

§ 493. Residence—Rules for Determining.

(Section 24.) For the purpose of registration or voting, the place of residence of any person must be governed by the following rules as far as they are applicable:

1. That place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person must not be held to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or of this state, nor while a student at any institution of learning, nor while kept at any alms house or other asylum at the public expense, nor while confined in any public prison, nor while residing on any Indian or military reservation.

3. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same.

4. A person must not be considered to have lost his residence who leaves his home to go into another state, or other district of this state, for temporary purposes merely with the intention of returning, provided he has not exercised the right of the election franchise in said state or district.

5. A person must not be considered to have gained a residence in any county into which he comes for temporary purposes merely without the intention of making such county his home.

6. If a person removes to another state with the intention of making it his residence, he loses his residence in this state.

7. If a person removes to another state with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this state, notwithstanding he entertains an intention of returning at some future period.

8. The place where a man's family resides is presumed his place of residence, but any man who takes up or continues his abode with the intention of remaining, or a place other than where his family resides, must be regarded as a resident of the place where he so abides.

9. A change of residence can only be made by the act of removal joined with the intent to remain in another place. There can only be one residence. A residence cannot be lost until another is gained.

10. The term of residence must be computed by including the day of the election.

11. Any person living upon an Indian or military reservation shall not be deemed to be a resident of Montana, within the meaning of this chapter, unless such person has acquired a residence in some county in Montana prior to taking up his residence upon such Indian or military reservation, provided, that if such person shall not be in the employ of the government while residing upon such Indian or military reservation, such person shall not be considered a resident of the state of Montana. [Amended March 8, 1915; Laws 1915, c. 122, p. 273.]

The eighth subdivision of former section 481 was, in reality, a rule of evidence. *Carwile v. Jones*, 38 Mont. 590, 602, 101 Pac. 153.

In the ninth subdivision of that section, the word "of" was evidently intended for the word "or." *Carwile v. Jones*, 38 Mont. 590, 604, 101 Pac. 153.

§ 493a. Certificates of Naturalization—Presentation to Registrar.

(Section 25.) When a naturalized citizen applies for registration his certificate of naturalization or a certified copy thereof must be produced and stamped, or written in ink by the registry agent with such registry agent's name and the year and day and county where presented, but if it satisfactorily appears to the registry agent, by the affidavit of the applicant (and the affidavit of one or more credible electors as to the credibility of such applicant when deemed necessary), that his certificate of naturalization or a certified copy thereof is lost or destroyed or beyond the reach of the applicant for the time being, said registry agent must register the name of said applicant, unless he is by law otherwise disqualified; but in case of failure to produce the certificate of naturalization or a certified copy thereof, the registry agent must propound the following questions:

1. In what year did you come to the United States?
2. In what state or territory, county, court and year were you finally admitted to citizenship?
3. Where did you last see your certificate of naturalization, or a certified copy thereof? [Amended March 8, 1915; Laws 1915, c. 122, p. 274.]

§ 493b. Judges to Mark Registry When Elector has Voted—Elector to Sign Name—Delivery of Books and Returns to County Clerk.

(Section 26.) The judges of election in each precinct, at every general or special election, shall, in the precinct register book, which shall be certified to them by the county clerk, mark a cross (X) upon the line opposite to the name of the elector, before any elector is permitted to vote the judges of election shall require the elector to sign his name upon one of the precinct register books, designated by the county clerk for that purpose, and in a column reserved in the said precinct books for the signature of electors. If the elector is not able to sign his name he shall be required by the judges to produce two freeholders who shall make an affidavit before the judges of election, or one of them, in substantially the following form.

State of Montana,
County of } ss.

We, the undersigned witnesses, do swear that our names and signatures are genuine, and that we are each personally acquainted with . . . , (the name of the elector) and that we know that he is residing at . . . , and that we believe that he is entitled to vote at this election, and that we are each freeholders in the county, which affidavit shall be filed by the judges, and

returned by them to the county clerk, with the return of the election; one of the judges shall thereupon write the elector's name, and note the fact of his inability to sign, and the names of the two freeholders who made the affidavit herein provided for. If the elector fails or refuses to sign his name and if unable to write fails to procure two freeholders who will take the oath herein provided, he shall not be allowed to vote. Immediately after the election and canvass of the returns, the judges of election shall deliver to the county clerk the copy of said official precinct register sealed, with the election returns and poll book, which have been used at said election. [Amended March 8, 1915; Laws 1915, c. 122, p. 275.]

§ 493c. Compelling County Clerk to Enter Names in Register.

(Section 27.) In any action or proceeding instituted in a district court to compel the county clerk to make and enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action against, may be joined as defendants. [Amended March 8, 1915; Laws 1915, c. 122, p. 276.]

§ 493d. Name of Voter must Appear in Copy of Register—Identification of Voter.

(Section 28.) No person shall be entitled to vote at any election mentioned in this act unless his name shall, on the day of election, except at school election in school districts of the second and third class, appear in the copy of the official precinct register furnished by the county clerk to the judges of election; and the fact that his name so appears in the copy of the precinct register shall be prima facie evidence of his right to vote; provided, that when the judges shall have good reason to believe, or when they shall be informed by a qualified elector that the person offering to vote is not the person who was so registered in that name, the vote of such person shall not be received until he shall have proved his identity as the person who was registered in that name by the oath of two reputable freeholders within the precinct in which such elector is registered. [Amended March 8, 1915; Laws 1915, c. 122, p. 276.]

See note following § 493n.

§ 493e. Erroneous Omission of Name from Poll Book—Remedy.

(Section 29.) Any elector whose name is erroneously omitted from any precinct poll book, may apply for and secure from the county clerk, a certificate of such error and stating the precinct in which such elector is entitled to vote, and upon the presentation of such certificate to the judges of election in such precinct the said elector shall be entitled to vote in the same manner as if his name had appeared upon the precinct poll book. Such certificate shall be marked "voted" by the judges and shall be returned by them with the poll book. [Amended March 8, 1915; Laws 1915, c. 122, p. 276.]

§ 493f. Authority of Deputy County Clerk.

(Section 30.) Wherever in this act the words "county clerk" appear, it shall be construed as extending and giving authority to any regularly appointed deputy county clerk. [Amended March 8, 1915; Laws 1915, c. 122, p. 276.]

§ 493g. "Elector" Defined.

(Section 31.) The word "elector" as used in this law, whether used with or without the masculine pronoun, shall apply equally to male and female electors. [Amended March 8, 1915; Laws 1915, c. 122, p. 276.]

§ 493h. "Election" Defined.

(Section 32.) The word "election," as used in this law where not otherwise qualified, shall be taken to apply to general, special, primary nominating and municipal elections, and to elections in school districts of the first class. [Amended March 8, 1915; Laws 1915, c. 122, p. 276.]

§ 493i. Violation of Act a Felony.

(Section 33.) Any person or persons or any officer of any county, city or town or school district, who, under the provisions of this act, are required to perform any duty, who shall willfully or knowingly fail, refuse or neglect to perform such duty, or to comply with the provisions of this act, shall, upon conviction, be fined in the sum of not less than three hundred dollars (\$300), nor more than one thousand (\$1,000) or by imprisonment in the county jail for a period of not less than three months and no more than one year. Upon the conviction of any officer of the violation of the provisions of this act, the judge of the district court hearing such proceeding shall, at the time of rendering judgment of conviction, include in such order of conviction, an order of the court that such officer be removed from office. [Amended March 8, 1915; Laws 1915, c. 122, p. 276.]

§ 493j. Challenge of Elector—Administration of Oath—Attempt to Vote After Rejection.

(Section 34.) If any person offering to vote at any primary election be challenged by a judge or any qualified elector at said election, as to his right to vote thereat, an oath shall be administered to him by one of the judges that he will truly answer all questions touching his right to vote at such election, and if it appear that he is not a qualified voter under the provisions of this act, his vote shall be rejected; and if any person whose vote shall be so rejected shall offer to vote at the same election, at any other polling place, he shall be deemed guilty of a misdemeanor. [Amended March 8, 1915; Laws 1915, c. 122, p. 277.]

§ 493k. Acts Constituting Violation of Law—Penalty.

(Section 35.) Any person who shall make false answers either for himself or another, or shall violate or attempt to violate any of the provisions of this act, or knowingly encourage another to violate the same, or any public officer or officers or other persons upon whom any duty is imposed by this act, or any of its provisions who shall willfully neglect such duty, or shall willfully perform it in such way as to hinder the objects and purposes of this act, shall, excepting where some penalty is provided by the terms of this act, be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a period of not less than one year or more than fourteen years, and if such person be a public officer, shall also forfeit his office. [Amended March 8, 1915; Laws 1915, c. 122, p. 277.]

§ 493 l County Commissioner to Supply Clerk With Help.

(Section 36.) It shall be the duty of the board of county commissioners of each county to provide the county clerk thereof with sufficient

help to enable him to properly perform the duties imposed upon him by this act, and the cost of the stationery, printing, publishing and posting to be furnished or procured by the county clerk by the provisions of this law shall be a proper charge upon the county. [Amended March 8, 1915; Laws 1915, c. 122, p. 277.]

§ 493m. Repealing Clause.

(Section 37.) Chapter 74 of the Laws of 1913 entitled "An act to amend chapter 113 of the Laws of 1911, relating to the registration of electors in counties, cities, towns and school districts and all acts or parts of acts and all amendments thereto in conflict herewith are hereby repealed." [Amended March 8, 1915; Laws 1915, c. 122, p. 277.]

See note following next section.

§ 493n. When Act Becomes Operative.

(Section 38.) This act shall be in full force and effect sixty (60) days from and after its passage and approval by the Governor. [Amended March 8, 1915; Laws 1915, c. 122, p. 278.]

The preceding sections 470 to 493n, constitute chapter 122 of the Laws of 1915. That chapter amends chapter 113 of the Laws of 1911 and repeals chapter 74 of the Laws of 1913. But on the same day that chapter 122 was approved, namely, March 8, 1915, the legislature, by another act, amended chapter 74 of the Laws of 1913, by enacting chapter 130, which is as follows:

CHAPTER 130.

"An act to amend sections 7 and 35 of chapter 74 of the Session Laws of the Thirteenth Legislative Assembly relating to the registration of electors in counties, cities, towns and school districts, and to repeal section 41 of said act."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That sections 7 and 35 of chapter 74 of the Session Laws of the Thirteenth Legislative Assembly, relating to the registration of electors in counties, cities, towns and school districts, be and the same are hereby amended to read as follows:

Section 7. The county clerk and ex-officio registrar of each county shall keep and enter in registers, to be designated as precinct registers the names of the qualified electors in the respective precincts of said county, the county clerk shall register the names of all qualified electors at his office, and not elsewhere between the hours of 9 A. M. and 5 P. M. on all legal days, in the manner as hereinafter provided. Such general registration of all voters shall be required but once, and any person once registered shall thereafter, so long as he remains a qualified elector of the precinct from which he registers, be entitled to vote, provided the names of any qualified elector who shall fail to vote

at any general election, shall, by the county clerk, in the manner hereinafter provided, be removed from the precinct register and he may not thereafter vote until he has again registered. During the period of thirty days immediately preceding any general or special election, and during a period of thirty days immediately preceding any primary nominating, municipal, or school election, in school districts of the first class, such registration shall be closed and no person during the period herein specified immediately preceding any general or special primary nominating, municipal or school election in school districts of the first class shall be permitted to register for such election. The county clerk as ex-officio registrar must write in red ink on the line below the last entry on each page of the precinct registers the words, "Closed on account of election to be held on —."

Section 2. Section 35 of said chapter 74 of the Session Laws of the Thirteenth Legislative Assembly, be and the same is hereby amended to read as follows:

"Section 35. No person shall be entitled to vote at any election mentioned in this act except at school elections in districts of the second and third class, unless his name shall, on the day of election, appear in the copy of the official precinct register or check list, furnished by the county clerk to the judges of election, at the precinct at which he offers to vote; and the fact that his name so appears in the check lists and in the copy of the official precinct register, in the possession of the judges of election, shall be prima facie evidence of this right to vote; provided that when the judges shall have good reason to believe or when they shall be informed by a qualified elector that the person offering to vote is not the person who was so registered in that name, the vote of such person shall not be received until

he shall have proved his identity as the person who was registered in that name."

Section 3. Section 41 of said chapter of said Session Laws of the Thirteenth Legislative Assembly, be and the same is hereby repealed.

Section 4. This act shall be in force and effect from and after its passage and approval.

Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 8, 1915.

The following decisions were rendered by the supreme court in construing chapter 113 of Laws of 1911 prior to the repeal of that chapter:

In a suit to enjoin a bond issue on the ground of the invalidity of the election held to sanction it the point that this section, dispensing with the necessity of a new registration in prospect of a special election, violates article IX, sections 2 and 12 of the Constitution, defining the qualifications of electors, can be made only prior to the election or, if after it, on a showing that by reason of the operation of the statute voters opposed to the issue in sufficient numbers to defeat it had been disfranchised. *Potter v. Furnish*, 46 Mont. 394, 128 Pac. 542.

It cannot be said that all persons residing on an Indian reservation are ineligible as voters as being other than residents of the state, since a person having once gained a residence in the state does not lose it or acquire another by living on a reservation; the residence of such person for voting purposes remains at the place where he acquired it before going on the reservation. *Stephens v. Nacey*, 49 Mont. 237, 141 Pac. 649.

The purpose of the statute is to provide a scheme for perpetual registration; it was re-enacted with amendments in Laws of 1913, chapter 74, and as amended is intended to apply to all elections under all conditions, the amendments extending the provisions to special as well as general elections. *State ex rel. Kehoe v. Stromme*, 49 Mont. 27 et seq., 139 Pac. 1002.

The purpose of Laws of 1911, chapter 113, here re-enacted with amendments, is to provide a scheme for perpetual registration suitable to all elections under all conditions, and the amendments consist largely in making the various provisions applicable to special as well as to general elections. *State ex rel. Kehoe v. Stromme*, 49 Mont. 27 et seq., 139 Pac. 1002.

By the great register law the county clerk is required to register all qualified electors, so that if "qualified electors" means registered electors, the requirement is that he register the registered electors. Inspection of the statute in its several parts will disclose the indiscriminate use

of the words. *State ex rel. Lang v. Furnish*, 48 Mont. 32, 134 Pac. 297.

The duty is imposed upon the state horticulturist to attach his certificate of inspection to such lots or bills of nursery stock as are found free from disease or pests, and he is left with no discretion to refuse to do so because of any omission by the shipper to take out a license and give the bond required by law. *Welch v. Dean*, 49 Mont. 266, 141 Pac. 548.

It was held in *Potter v. Furnish*, 46 Mont. 391, 128 Pac. 542, that inasmuch as the contention was made after the election there had to be an actual showing that the voters disfranchised by reason of the act complained of were sufficient in number to have altered the result of the voting; but that if the proceeding had been one to prevent an election's being held only the question of the invalidity of holding it in the circumstances would have had to be brought before the court. *State ex rel. Kehoe v. Stromme*, 49 Mont. 26 et seq., 139 Pac. 1002.

In determining whether a petition for the division of a county, under the act of 1911, bears the signatures of the requisite number of qualified electors, the county commissioners may examine the names found upon the list of registered electors; and, in doing so, the board does not interfere with the power lodged in the registry agent, under this section, to cancel entries on the official registration books; the board does not remove any name. *State v. Board of County Commissioners*, 43 Mont. 533, 539, 117 Pac. 1062.

Whether former section 491 of the Revised Codes is unconstitutional or not, an election in pursuance thereof should be held valid, unless it appears that a sufficient number of legal voters, to have changed the result, were prevented by such law from casting their ballots. *Reid v. Lincoln County*, 46 Mont. 31, 59, 125 Pac. 429.

That section has been a part of the law since 1895; it appears as section 33 of the acts of 1911 and 1913; and the manifest effect of it is to exclude from special elections every elector whose name does not appear upon the registration books used at the last preceding general election; but the section is in utter contravention of the purposes of the act of 1913, relating to the registration of electors, as everywhere else expressed therein; hence, in construing the act of 1913, section 33 of that act must be considered an inadvertence, which section cannot be given effect without doing violence to the clear and plain intent of the law considered in its entirety. *State v. Stromme*, 49 Mont. 25, 28, 139 Pac. 1002.

Editorial Notes.

Registration laws, constitutionality of.
23 Am. Dec. 642; 54 Am. Rep. 843;

Ann. Cas. 1913B, 17; 25 L. R. A. 484.

Registration, power of the state to require and to prescribe mode of proof of. 28 Am. St. Rep. 260.

Registering or voting illegally, meaning of term "knowingly." Ann. Cas. 1912A, 436.

§§ 494-497.

See §§ 470-474, ante.

§ 499.

A voting precinct cannot be lawfully established upon an Indian reservation. *Stephens v. Nacey*, 49 Mont. 230, 237, 141 Pac. 649.

The townsite of Poplar is not upon an Indian reservation, within the meaning of this section; and it is not unlawful for the county commissioners to establish a voting precinct at that place. *Stephens v. Nacey*, 49 Mont. 230, 245, 141 Pac. 649.

§ 524a. Nomination of Judicial Officers—Certificate of Nomination.

Hereafter all nominations for judicial offices shall be made only in the manner provided by section 1313 of the Political Code of the state of Montana.

No officer, authorized or required by any statute of this state to file any papers or certificates reciting the nomination of candidates for public office, shall receive for filing, or place on file, any certificate or paper reciting the nomination of any candidate for any judicial office except such nomination be made pursuant to the provisions of said section 1313 of the Political Code. [Approved March 8, 1909; Laws 1909, c. 113, p. 160.]

See Primary Election Law, post.

The words "judicial officers" indicate judges of the supreme court, district courts, justices of the peace and judges of other inferior courts; and a state senator is not to be so described merely because it is possible he may be called upon to sit in a court of impeachment. *State ex rel. Haviland v. Beadle*, 42 Mont. 175, 111 Pac. 720.

The Nonpartisan Judiciary Act failed to become effective by reason of the fact that its provisions are not sufficient to make it operative throughout the state. *State ex rel. Holliday v. O'Leary*, 43 Mont. 161, 115 Pac. 204.

§ 545.

See statute relative to choice of United States senators, post.

This section, known as the anti-fusion statute, was not impliedly repealed by the primary election law of 1913, and is not unconstitutional. *State v. Wileman*, 49 Mont. 436, 437, 442, 143 Pac. 565.

Editorial Notes.

Ballots, distinguishing marks which invalidate. 49 Am. St. Rep. 240; 47 L. R. A. 806.

§§ 521-540.

See referendum measure, Party Nominations by Direct Vote, post.

Partisan nominations of candidates for judicial offices are recognized by this and the next two following sections. *State v. O'Leary*, 43 Mont. 157, 167, 168, 115 Pac. 204.

§ 524.

Section 524 is referred to, in discussing the unconstitutionality of the act of 1909, providing for nonpartisan nomination to judicial office. *State v. O'Leary*, 43 Mont. 157, 165, 168, 115 Pac. 204.

Under the Laws of 1909, all nominations for judicial offices shall be made only in the manner provided by this section; but the office of state senator is not a "judicial office"; that term is limited to judges of courts and justices of the peace. *State v. Beadle*, 42 Mont. 174, 111 Pac. 720.

Name not on official ballot, right of electors to vote for. 91 Am. St. Rep. 682.

Effect on ballots cast at election of official irregularity therein. Ann. Cas. 1912A, 171; 12 Ann. Cas. 722.

Number of times name of candidate may appear on official ballot. Ann. Cas. 1913B, 177; 3 Ann. Cas. 796.

§ 552.

History of section 1361 of the Political Code of 1895. *Carwile v. Jones*, 38 Mont. 590, 595, 101 Pac. 153.

While a substantial compliance with the statute is all that is required, ballots are properly excluded where there was no compliance at all with statutory requirements. *Carwile v. Jones*, 38 Mont. 590, 595, 101 Pac. 153.

A ballot properly marked, but from which the stub has not been detached by the ballot judge, as required, should be counted; a voter is not to be disfranchised by the errors or wrongful acts of election officers. *Carwile v. Jones*, 38 Mont. 590, 600, 101 Pac. 590.

If the judges of election assist a voter, and no reason appears why they did so, it must be assumed that they regularly performed their official duty. *Carwile v. Jones*, 38 Mont. 590, 597, 101 Pac. 153.

§ 587a. Forms for Use in Transmitting Election Returns.

(Section 1.) In sending out election supplies to each precinct for each general election it shall be the duty of the county clerk in each county to send with such supplies not less than six printed forms, with a return envelope, for the use of judges of election in transmitting election returns for public information. Said printed forms shall be in ballot form on tinted paper, and the name of each candidate and each proposition voted on shall be printed on said blank. Brief instructions for the use of said blank, as contained in this act, shall also be printed on said blank. [Approved February 11, 1915; Laws 1915, c. 12, p. 14.]

§ 587b. Copying of Total Votes Cast for Each Candidate.

(Section 2.) As soon as all of the ballots have been counted in any precinct it shall be the duty of the election judges to correctly copy the total vote cast for each candidate and the total vote cast for and against each proposition on the blanks furnished by the county clerk, as provided in section 1 of this act. [Approved February 11, 1915; Laws 1915, c. 12, p. 14.]

§ 587c. Posting and Mailing Blanks.

(Section 3.) One of said blanks, properly filled out, shall be posted forthwith at the polling place; and one copy, correctly filled out, shall be sent by mail or by messenger, when the same can be done without expense, to the county clerk. Said copy may be sent by the same messenger carrying the official election returns, but the same shall not be inclosed or sealed with the other returns. [Approved February 11, 1915; Laws 1915, c. 12, p. 14.]

§ 587d. Penalty for Failure to Comply With Act.

(Section 4.) Any judge of election, or other officer, who shall fail or refuse to comply with the provisions of this act [§§ 587a to 587d herein] shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding fifty dollars (\$50). [Approved February 11, 1915; Laws 1915, c. 12, p. 14.]

§ 593. Duties of Canvassing Boards—Tie Vote.

The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or a subdivision thereof, and in the event of two or more persons receiving an equal and sufficient number of votes to elect to the office of state senator, or member of the House of Representatives, it shall be the duty of the board, under the direction of and in the presence of the district court, or judge thereof, to recount the ballots cast for such persons, and the board shall declare elected the person or persons shown by the recount to have the highest number of votes if such recount shall show that two or more such persons receive an equal and sufficient number of votes to elect to the same office, then and in that event, the board shall certify such facts to the Governor. [Amendment approved March 4, 1909; Laws 1909, p. 113.]

§ 611. Voting Machines.

The board of county commissioners of counties of the first class shall and the boards of county commissioners of other counties and city coun-

cils of all cities and towns, may, at their option, adopt and purchase for use in the various precincts, any voting machine approved in the manner above set forth in this act, by the voting machine commission and none other. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following the adoption of such machines in a city, village or town, as many may be supplied as it is practicable to procure, and the same shall be used in such precinct of the municipality, as the proper officers may order. The proper officers of any city, village or town may, not later than the tenth day of September, in any year in which a general election is held, unite two or more precincts into one for the purpose of using therein at such election a voting machine, and the notice of such uniting shall be given in the manner prescribed by law for the change of election districts. [Amendment approved February 5, 1909; Laws 1909, p. 7.]

§ 613. Elections—Manner of Conducting.

The room in which the election is held shall have a railing separating that part of the room to be occupied by the election officers from that part of the open occupied by the voting machine. The exterior of the voting machine and every part of the polling place shall be in plain view of the judges. The machine shall be so placed that no person on the opposite side of the railing can see or determine how the voter casts his vote, and that no person can so see or determine from the outside of the room. After the opening of the polls the judges shall not allow any person to pass within the railing to that part of the room where the machine is situated except for the purpose of voting and except as provided in the next succeeding section of this act; and they shall not permit more than one voter at a time to be in such part of the room. They shall not themselves remain or permit any person to remain in any position that would permit him or them to see or ascertain how the voter votes or how he has voted. No voter shall remain within the voting machine booth or compartment longer than one minute and if he should refuse to leave it after that lapse of time he shall at once be removed by the judges. The election board of each election precinct in which a voting machine is used shall consist of three judges of election. Where more than one machine is to be used in an election precinct, one additional judge shall be appointed for each additional machine. Before each election at which voting machines are to be used, the custodian shall instruct all judges of election that are to serve thereat, in the use of the machine, and their duties in connection therewith; and he shall give to each judge that has received such instruction and is fully qualified to conduct the election with a machine a certificate to that effect. For the purpose of giving such instruction, the custodian shall call such meeting or meetings of the judges of election as shall be necessary. Each judge of election shall attend such meeting or meetings and receive such instructions as shall be necessary for the proper conduct of the election with the machine; and, as compensation for the time spent in receiving such instruction, each judge that shall qualify for and serve in the election shall receive the sum of one dollar, to be paid to him at the same time and in the same manner as compensation is paid to him for his services on election day. No such judge of election shall serve in any election at which a voting machine is used, unless he shall have received such instruction and is fully qualified to perform his duties in connection with the machine, and has received a certificate to that effect

from the custodian of the machines; provided, however, that this shall not prevent the appointment of a judge of election to fill a vacancy in an emergency. [Amendment approved March 6, 1909; Laws 1909, p. 130.]

§ 615. Ballots and Instructions to Voters.

Not more than ten or less than three days before each election at which voting machines are to be used, the board or officials charged with the duty of providing ballots shall publish in newspapers representing at least two political parties, a diagram of reduced size showing the fact of the voting machine after the official ballot labels are arranged thereon, together with illustrated instructions how to vote, and a statement of the locations of such voting machines as shall be on public exhibition; or in lieu of such publication said board or officials may send by mail or otherwise at least three days before the election a printed copy of said reduced diagram to each registered voter. Not later than forty days before each election at which voting machines are to be used, the Secretary of State shall prepare samples of the printed matter and supplies named in this section, and shall furnish one of each thereof to the board or officials having charge of election in each county, city, or village in which the machines are to be used; such samples to meet the requirements of the election to be held, and to suit the construction of the machine to be used. The board or officials charged with the duty of providing ballots shall provide for each voting machine for each election the following printed matter and supplies: Suitable printed or written directions to the custodian for testing and preparing the voting machine for the election: One certificate on which the custodian can certify that he has properly tested and prepared the voting machine for the election; one certificate on which some person other than the custodian preparing the machine can certify that the voting machine has been examined and found to have been properly prepared for the election; one certificate on which the party representatives can certify that they have witnessed the testing and preparation of the machines; one certificate on which the deliverer of the machines can certify that he has delivered the machines to the polling places in good order; one card stating the penalty for tampering with or injuring a voting machine; two seals for sealing the voting machine; one envelope in which the keys to the voting machine can be sealed and delivered to the election officers, said envelope to have printed or written thereon the designation and location of the election district in which the machine is to be used, the number of machine, the number shown on the protective counter thereof after the machine has been prepared for the election, and the number or other designation on such seal as the machine is sealed with; said envelope to have attached to it a detachable receipt for the delivery of the keys of the voting machine to the judges of election; one envelope in which keys to the voting machine can be returned by the election officers after the election; one card stating the name and telephone address of the custodian on the day of the election; two statements of canvass on which the election officers can report the canvass of the votes as shown on the voting machine, together with other necessary information relating to the election, said statements of canvass to take the place of all tally papers, statements, and returns as provided heretofore; three complete sets of ballot labels; two diagrams of the fact of the machine with the ballot labels thereon, each diagram to have printed above it the proper instructions to voters for voting on the machine; six suitable printed instructions to judges

of election; six notices to judges of election to attend the instruction meeting; six certificates that the judges of election have attended the instruction meeting, have received the necessary instruction, and are qualified to conduct the election with the machine. The ballot labels shall be printed in black ink on clear white material of such size and arrangement as shall suit the construction of the machine; provided, however, that the ballot labels for the questions may contain a condensed statement of each question to be voted on, followed by the words "Yes" and "No", and provided further that the titles of the officers thereon shall be printed in type as large as the space for each office will reasonably permit, and wherever more than one candidate will be voted for for an office, there shall be printed below the office title thereof the words "vote for any two," or such number as the voter is lawfully entitled to vote for for such office. When any person is nominated for an office by more than one political party, his name shall be placed upon the ticket under the designation of the party which first nominated him; or, if nominated by more than one party at the same time, he shall, within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed, a written statement indicating the party designation under which he desires his name to appear upon the ballot, and it shall be so printed. If he shall refuse or neglect to so file such a statement, the officer with whom the certificate of nomination is required to be filed, shall place his name under the designation of either of the parties nominating him, but under no other designation whatsoever. If the election be one at which all the candidates for the office of presidential electors are to be voted for with one device, the county commissioners shall furnish for each machine twenty-five ballots for each political party, each ballot containing the names of the candidates for the office of presidential electors of such party and a suitable space for writing in names, so that the voter can vote thereon for part of the candidates for the office of presidential electors of one party and part of the candidates therefor of one or more other parties or for persons for that office not nominated by any party. For election precincts in which voting machines are to be used no paper ballots shall be furnished for any officer to be voted for on the machine. For election precincts in which voting machines are to be used no books or blanks for making poll lists shall be provided, but in lieu thereof, the registry lists shall contain a column in which can be entered the number of each voter's ballot as indicated by the number registered on the public counter as he emerges from the voting machine. [Amendment approved March 6, 1909; Laws 1909, p. 132.]

§ 625. Repair of Voting Machine—Unofficial Ballots.

In case any voting machine used in any election shall, during, or before, the time the polls are open, become injured so as to render it inoperative in whole or in part, it shall be the duty of the judges of election immediately to give notice thereof to the county commissioners, and it shall be the duty of said commissioners, if possible, to repair the machine at once or to substitute another machine for the injured machine; and, at the close of the polls if a machine has been so substituted, the records of both machines shall be taken and the votes shown on their corresponding counters shall be added together in ascertaining and determining the result of the election. If no other machine can be procured for use at such election, and the injured machine cannot be repaired in time for further use at such

election, the judges of said election may permit the use of unofficial ballots by the voters, which ballots may be received by the judges of election and be placed by them in a receptacle to be provided therefor by them and counted with the votes registered on the voting machine, and the result declared the same as if there had been no accident to the voting machine; any marking of such unofficial ballots by the voters which shall clearly indicate their intentions shall be deemed a proper and sufficient manner of voting; for this purpose the printed diagram of reduced size referred to in section 615 may be used if same can be procured, or ballots may be made from such suitable paper of other material as the precinct election board can procure. The unofficial ballots thus voted shall be preserved and returned to the county commissioners with a statement setting forth how and why the same were used. [Amendment approved March 6, 1909; Laws 1909, p. 134.]

§ 637. Election for Full Term.

The election of senators in Congress of the United States for full terms and to fill vacancies therein must be held on the first Tuesday after the first Monday in November next preceding the commencement of the term to be filled or following the occurrence of such vacancy, or if any election therefor be invalid, or not held at such time, then the same shall be held at the time of the next succeeding general state election. Nominations of candidates and elections to the office shall be made in the same manner as is provided by law in case of Governor. [Amendment approved March 8, 1915; Laws 1915, p. 281.]

§ 638. Election to Fill Vacancy.

When a vacancy happens in the office of one or more senators from the state of Montana in the Congress of the United States, the Governor of this state shall issue, under the seal of the state, a writ or writs of election, to be held at the next succeeding general state election, to fill such vacancy or vacancies by vote of the electors of the state; provided, however, that the Governor shall have power to make temporary appointments to fill such vacancy or vacancies until the electors shall have filled them. [Amendment approved March 8, 1915; Laws 1915, p. 281.]

CHAPTER I.

STATE BOARD OF EDUCATION.*

§ 642. Membership.

The state board of education shall consist of eleven members, of which number the Governor, state superintendent of public instruction and Attorney General shall be ex-officio members. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 197.]

The clerk is not a member of the board. *Kenyon-Noble Co. v. School District*, 40 Mont. 123, 130, 105 Pac. 551.

*Sections 642 to 665 of the Revised Codes of 1907, as well as sections 791 to 1044, were repealed by chapter 76 of the Laws of 1913, and the subject of public schools, to which those sections were addressed, was covered by such chapter 76. The portion of that chapter which has reference to the state board of education

is here set forth and designated as sections 642 to 653, and the remainder of the chapter is set forth under sections 791 to 1044x, post.

Inserted between sections 665 to 791 herein are those sections which have to do with the State University, the School of Mines, the Agricultural College and the Normal School. The sections covering these subjects in the Revised Code of 1907 are 666 to 790, and they were undisturbed

by Chapter 76 of the Laws of 1913. Some of such sections, however, have been amended at other times, and statutes have from time to time been enacted which affect these state education institutions, as will be seen from sections 673-786, post.

§ 643. Appointment and Term.

The Governor shall appoint, by and with the advice and consent of the Senate, the remaining eight members of the board. The term of office for members so appointed upon the board shall be four (4) years and until their successors are appointed and qualified. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 197.]

§ 644. Oaths.

The persons so appointed as members of the state board of education shall before entering upon the duties of their office, take and subscribe the constitutional oath of office prescribed for civil officers, which shall be filed in the office of the Secretary of State. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 197.]

§ 645. Officers.

The Governor shall be the president of said board, and the superintendent of public instruction shall be the secretary thereof. The state treasurer shall be the treasurer of the board. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 197.]

§ 646. Quorum.

A majority of said board shall constitute a quorum for the transaction of business. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 197.]

§ 647. Meetings.

The board shall hold semi-annual meetings at the state capitol on the first Monday in June and December in each year, and may hold special meetings at any time and place they may direct. The president and secretary of the board may also call special meetings of said board at any time and place, if in their judgment necessity requires it. The members of said board shall receive no compensation for their services, but shall be allowed their actual traveling expenses incurred in attending the meetings of the board, which expense and all other expenses, on the certificate of the secretary of the board, shall be audited and approved by the state board of examiners, and paid by warrant of the state auditor on the state treasurer. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 197.]

§ 648. Powers and Duties.

(1.) To have general control and supervision of the University of Montana, Montana State Normal College, Agricultural College of Montana, State Orphans' Home, Montana School of Mines, Montana School for the Deaf and Blind, and State Reform School.

(2.) To adopt rules and regulations, not inconsistent with the Constitution and the laws of this state, for its own government and proper and necessary for the execution of the powers and duties conferred upon it by law.

(3.) To provide, subject to the laws of the state, rules and regulations for the government of the affairs of the state educational institutions named in this section.

(4.) To prescribe standards of promotion to the high school department of all public schools of the state and to accredit such high schools as maintain the standards of work prescribed by the board; provided, that in all examinations which shall be given by this board and shall be conducted by the county board of educational examiners, to determine the scholarship of candidates for promotion to high school, fifty per cent of the credits required shall be based upon the eighth grade work completed in any school of this state and certified to the county superintendent by the principal or teacher of such grade.

(5.) To grant diplomas to the graduates of all state educational institutions, where diplomas are authorized or now granted, upon the recommendation of the faculties thereof, and may confer honorary degrees upon persons, other than graduates, upon the recommendation of the faculty of such institutions.

(6.) To adopt and use, in the authentication of its acts, an official seal.

(7.) To grant state diplomas valid for six years, and to grant life diplomas.

(8.) To keep a record of its proceedings.

(9.) To make an annual report on or before the first day of January in each year, which may be printed under the direction of the state board of examiners.

(10.) To appoint and commission experienced teachers as instructors in county institutes.

(11.) To have when not otherwise provided by law, control of all books, records, buildings, grounds and other property of the institutions and colleges named in this section.

(12.) To receive from the state board of land commissioners, or other boards, or persons, or from the government of the United States, any and all funds, incomes and other property to which any of said institutions may be entitled and to use and appropriate the same for the specific purpose of the grant or donation, and none other; and to have general control of all receipts and disbursements of any of said institutions.

(13.) To choose and appoint a president and faculty for each of the various state institutions named herein and to fix their compensation.

(14.) To confer upon the executive board of each of said institutions such authority relative to the immediate control and management, other than financial, and the selection of the faculty, teachers and employees as may be deemed expedient, and may confer upon the president and faculty such authority relative to the immediate control, and management, other than financial, and the selection of teachers and employees as may by said board be deemed for the best interest of said institutions. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 197.]

The clerk of a school district has no authority to receive orders on his district for the payment of money; he is not a member of the board of trustees; hence, the presentation of such a claim

to him is nugatory, and his assurances that the same will be paid do not bind the school district. *Kenyon-Noble L. Co. v. School District*, 40 Mont. 123, 129, 105 Pac. 551.

§ 649. Local Executive Boards.

1. *Membership.*—There shall be an executive board, consisting of three members, for each of said institutions, two of whom shall be appointed by the Governor, by and with the advice and consent of the state board of education, and the president of such institution shall be ex-officio mem-

ber of said board. At least two of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always, to the supervision and control of said state board.

2. *Officers.*—The president of the institution shall be the chairman of the board and said board shall elect a secretary who may or may not be a member of said board, and who may also act as treasurer, and the treasurer of said board shall be treasurer of the institution, and such secretary and treasurer shall give bond with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for any paying over to, and for the use of said institution, all moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by said board of examiners. The duties of the chairman and secretaries of each of said executive boards shall be those usually performed by such officers, or which may be designated by the state board of education or the state board of examiners.

3. *Terms of.*—The ex-officio member of each of said executive boards shall hold his office during his continuance as president of such institution, and the two members appointed by the Governor shall hold office for the term of four years from and after the third Monday in April of the year appointed, unless sooner removed by the Governor or by the state board of education. Such members shall qualify by making and filing their oath of office with the state board of education.

4. *Meetings of.*—The executive board of each of said institutions shall meet in regular session at least once in each quarter, and monthly, or oftener, if the business of such institution require it.

5. *Compensation of.*—The members of each of the executive boards, except the chairman, shall receive such compensation for their services as shall be fixed by the state board of education, not exceeding the sum of five (\$5) dollars for each day actually spent in the discharge of their official duties, and not exceeding the sum of one hundred and twenty-five (\$125) dollars in any one year for each member, and such members shall also be reimbursed from the amount appropriated by the legislature for the maintenance and support of such institutions, all expenses necessarily incurred by them in discharge of their official duties as members of said boards.

6. *Powers and Duties.*—Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board.

Said executive board shall also have and exercise power and authority in contracting current expenses and in auditing, paying and reporting bills for salaries, or other expenses incurred in connection with such institutions, provided, the board of examiners may not limit the power of the executive board in making expenditures or contracts which in no single instance or for any single purpose does not exceed two hundred and fifty (\$250) dollars.

7. *Reports of.*—Each of such executive boards shall on or before the first Monday in June of each year make a detailed statement and report of

all its transactions and of the condition of the institution, including the number of teachers, professors, and employees, with the salary or wages paid to each and a detailed statement of all expenses and disbursements of such institution, which report shall contain such other information or recommendations as may be required by the state board of examiners, or by the state board of education and the state board of education, and the state board of education and the state board of examiners shall have authority to call for a report and statement from such executive boards at any time such board may deem it advisable. All such reports by such boards shall be made in triplicate, one copy shall be retained by such board, one copy shall be filed with the state board of education, and one copy with the state board of examiners.

8. *Vacancies*.—All vacancies occurring in the membership of any of said executive boards shall be filled by appointment by the Governor, which appointments shall be referred to the state board of education at its first meeting thereafter for confirmation. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 201.]

§ 650. Certificates.

1. *State.—How Obtained.*

(a) *By Examination*.—State certificates may be issued to such persons as have good moral character and who have held for one year and still hold a professional county certificate, in full force and effect, when such persons have passed a satisfactory examination under the direction of the state board of education, in English literature, history of education, and general history, and have furnished satisfactory evidence of having been successfully engaged in teaching for at least thirty-five months; provided, that such certificates shall be renewed if the holder has taught successfully twenty-seven months during the life of said certificate.

(b) *By Indorsement*.—State certificates may be granted to graduates of higher educational institutions and to holders of state certificates, within or without the state, upon conditions established by the state board of education.

(c) *By Renewal*.—State certificates may be renewed by the state board of education provided the holder has taught successfully twenty-seven months during the life of said certificate.

2. *Life Diplomas.—How Obtained.*

(a) *By Examination*.—Life diplomas may be issued upon the same conditions as state certificates except that in addition the applicant must pass satisfactory examinations and tests under such supervision and upon such additional subjects as may be prescribed by the state board of education, and must furnish satisfactory evidence of having been successfully engaged in teaching for at least seventy months.

(b) *By Indorsement.*

1. Any graduate of the State Normal College shall, on the registry of his diploma in the office of the state superintendent of public instruction, be entitled to teach in the public schools of the state of Montana without other or further examination for the term of six years after such graduation and every graduate of the three year course shall, on furnishing to the state board of education satisfactory evidence of having successfully taught in the public schools of the state twenty-seven months, be entitled to have said

diploma validated as a life diploma; and every graduate of the four year course shall on furnishing to the state board of education satisfactory evidence of having successfully taught in the public schools of the state eighteen months, be entitled to have said diploma as a life diploma. Provided, however, that those graduating from the State Normal College prior to February 1, 1913, in the four year course, shall be required to teach successfully but nine months, and those of the three year course but eighteen months, to receive a life diploma.

2. Any graduate of the University of Montana, shall, on the registry of his diploma, together with his University Certificate of Qualification to each, in the office of the state superintendent of public instruction, be entitled to teach, in the high schools of the state of Montana without other or further examination, for the term of six years after such graduation, and every such graduate shall, on furnishing the state board of education, satisfactory evidence of having successfully taught in the high schools twenty-seven months, be entitled to have said diploma validated as a life diploma.

The rules of the faculty of the University of Montana for the issuance of the University Certificate of Qualification to each shall be submitted to the state board of education for its sanction.

3. *On Certificates.*—Life diplomas may be granted to graduates of higher educational institutions maintaining the same standards as the University of Montana and the State Normal School, and to holders of state certificates, within or without the state, upon conditions established by the state board of education.

3. *Registration.*—State and life certificates and diplomas, before they shall be valid in any county must be registered in the office of the county superintendent.

4. *Revocation of.*—Any state or life diploma may be revoked by the state superintendent of public instruction for incompetency or immoral conduct on the part of the holder of it, or for any cause that would require the state board of education to refuse to grant it, if known at the time the diploma was granted; but, before any such revocation, the holder shall be served with a written statement of the charges against him, and shall have an opportunity for defense before said state board of education. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 203.]

§ 651. Treasurer Executive Board Agricultural College.

The treasurer of the executive board of the Agricultural College of Montana shall have the authority to receive from the treasurer of the state of Montana the cash appropriation received from the United States by authority of the act of Congress of August 30, 1890 (26 Statutes at Large, page 417), known as the second Morrill Act, and the act of Congress of March 4, 1907 (Statutes at Large, page 1281), known as the Nelson Amendment. And such cash appropriation shall be expended by the executive board of said Agricultural College, under the general supervision of the state board of education, but only for the purpose for which the same is appropriated by Congress.

The treasurer of said executive board of said Agricultural College shall also have the authority to receive all moneys appropriated by the act of Congress of March 16, 1906 (34 Statutes at Large, page 63), entitled, "An act to provide for and increase the annual appropriation for agricul-

tural experiment stations, and regulating the expenditure thereof," and such money shall be expended by said executive board under the supervision and direction and control of the state board of education in the manner and for the purpose designated in said act of Congress, and as required by section 741 of the Revised Codes of Montana of 1907. The treasurer of the Agricultral College of Montana shall, on or before the first day of September of each year, make a detailed statement of the amounts received and disbursed under the provisions of the act of Congrsss of March 30, 1890, and of March 4, 1907, and shall report the same to the Secretary of Agriculture of the United States and to the Secretary of the Interior of the United States, as required by said acts of Congress, and shall file a duplicate thereof with the state board of examiners of the state of Montana on or before the 10th day of September of each year. Said treasurer shall also make a detailed statement of the amounts of money received and disbursed under the act of Congress of March 16, 1906, which reports shall be filed with the state board of examiners on or before the 10th day of September of each year, and shall also make such reports to the officers or departments of the United States as are now or may hereafter be required by the laws of the United States. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 205.]

§ 652. State Board of Examiners.

The state board of examiners of the state of Montana shall have supervision and control of all expenditures of all moneys, appropriated or recived for the use of said institutions from any and all sources, other than that received under and by virtue of the acts of Congress, hereinbefore referred to, and said state board of examiners shall let all contracts, approve all bonds for any and all buildings or improvements, and shall audit all claims to be paid from any moneys, other than that received under and by virtue of the acts of Congress herein referred to, but said state board of examiners shall have authority to confer upon the executive boards of such institutions such power and authority in contracting current expenses and in auditing, paying and reporting bills for salaries or other expenses incurred in connection with said institutions as may be deemed by said state board of examiners to be to the best interest of said institution. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 205.]

§ 653. Donations, Grants, Gifts.

All donations, grants, gifts or devises made to any of the institutions named herein shall be made to such institution in its legal name, and if made to any officer or boards of such institution the same shall be immediately transferred by such board or officer to such institution. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 205.]

§§ 654-665. [Repealed.]

By act approved March 12, 1913; Laws 1913, c. 76, p. 306.

UNIVERSITY, SCHOOL OF MINES, AGRICULTURAL COLLEGE, NORMAL SCHOOL.

§ 673. Powers and Duties of President of University—Report of Corresponding Secretary.

The president of the university shall be the president of the general faculty, and of the special faculties of the several departments or colleges and the executive head of the institution in all its departments. As such officer he shall have authority, subject to the state board of education to give general direction to the instruction, practical affairs and scientific investigations of the several colleges, and as long as the interests of the institution requires it, he shall be charged with the duties of one of the professorships. He shall perform the duties of the corresponding secretary for the university. He shall, annually, on or before the fifteenth day of June in each year, make a report to the state board of education, showing in detail the progress and condition of the university during the previous year, the number of professors and students in the several departments and classes, the nature and results of all important experiments and investigations, and such other matters, relating to the proper government, and educational work of the institution as he shall deem useful. It shall also be the duty of said president to furnish any special report when requested to do so by the state board of education or by the legislature. [Amendment approved February 23, 1911; Laws 1911, p. 77.]

§ 688a. State University to Include What Institutions.

(Section 1.) From and after the first day of July, 1913, the State University at Missoula, the College of Agricultural and Mechanic Arts at Bozeman, the School of Mines at Butte, and the Normal School at Dillon, and such Departments of said institutions as may hereafter be organized, shall constitute the University of Montana under the name and style of University of Montana. [Approved March 14, 1913; Laws 1913, c. 92, p. 423.]

§ 688b. State Board of Education to Have Control of University—Appointment of Employees, Faculty and Chancellor.

(Section 2.) The control and supervision of the University of Montana, as hereinbefore constituted, is vested in the state board of education, which must appoint a president and faculty for each of the various state institutions constituting the University of Montana, as hereinbefore provided, and such other officers, agents and employees for said University of Montana, and for its component state institutions as the state board may deem necessary, including, a chancellor of the University of Montana, and whose powers and duties shall be such as may be prescribed by the state board of education, which shall also prescribe the powers and duties of the president, faculty, officers, agents and employees of said institutions composing said University of Montana, and shall also establish for the government of the University of Montana and for its component institutions, and for the instruction given therein, such rules and regulations, not inconsistent with the laws of the state, as may be necessary for the proper government and control of the University of Montana, and its said component institutions. [Approved March 14, 1913; Laws 1913, c. 92, p. 423.]

§ 688c. Diplomas and Degrees.

(Section 3.) The state board of education shall have power, upon the recommendation of the executive board of any of said component institutions, to grant diplomas and to confer the customary degrees on the graduates of all departments of said university, and such degrees and diplomas shall run from the University of Montana, specifying substantially that the graduate has completed the course of study of the University of Montana at the College of Science, Literature and Liberal Arts, or the Law Department thereof, at Missoula, or the College of Agriculture and Mechanic Arts at Bozeman, or the School of Mines at Butte, or the Normal School at Dillon, as the case may be. [Approved March 14, 1913; Laws 1913, c. 92, p. 423.]

§ 688d. Duties of Board of Education.

(Section 4.) It shall be the duty of the state board of education, in the exercise of its discretion, in the government and control of said University of Montana, and its component institutions, as conferred upon it by the Constitution of the state, to take such steps and prescribe such rules as may be necessary to prevent unnecessary duplications of courses of instruction in the various educational institutions composing the University of Montana; to investigate carefully the needs of each of said institutions with reference to buildings, equipment and instruction; to estimate the necessary appropriations required for such needs and to make recommendations to the legislative assembly accordingly. [Approved March 14, 1913; Laws 1913, c. 92, p. 424.]

§ 688e. Seal of University—Diplomas and Degrees.

(Section 5.) The state board of education shall adopt and cause to be prepared a seal for the University of Montana, constituted as herein prescribed, which seal shall contain on the face thereof the words "University of Montana," which words shall be arranged on said seal as the state board of education may prescribe. Said seal shall remain in the custody of the secretary of the state board of education, and the same shall be affixed to all diplomas and degrees, and all other papers, instruments and documents executed by the said University of Montana, which from their character or nature may require a seal. If a chancellor of the said University of Montana shall be selected and employed by the state board of education, as herein provided for, such diplomas, degrees, papers, instruments and documents shall be signed by the chancellor of the university and attested by the Secretary of the state board of education. [Approved March 14, 1913; Laws 1913, c. 92, p. 424.]

§ 688f. Powers and Duties of Presidents of Several Institutions.

(Section 6.) The presidents of each of the educational institutions constituting the University of Montana, as herein prescribed, in connection with their respective executive boards of the several institutions, as now prescribed by law, shall have the immediate direction, management and control of their respective institutions, subject to the general supervision, direction and control of the state board of education, as now prescribed by law, and no one of the presidents of any of said institutions shall have any direction, control, management or authority in or over any of said institutions, except his own. [Approved March 14, 1913; Laws 1913, c. 92, p. 424.]

§ 688g. Interpretation of Act With Reference to Other Laws.

(Section 7.) Nothing herein contained shall be construed to contravene, abrogate, or conflict with any of the provisions of the act of the legislative assembly of the state of Montana approved March 1, 1909, being chapter 73 of the Session Laws of the Eleventh Legislative Assembly, or of the act of said assembly approved March 8, 1909, being chapter 120 of said Session Laws of the Eleventh Legislative Assembly.

(Section 8.) All acts or parts of acts in conflict herewith are hereby repealed. [Approved March 14, 1913; Laws 1913, c. 92, p. 425.]

§ 688h. Forestry School at State University.

(Section 1.) There is hereby created and established in this state and located at the city of Missoula, a forestry school, as a department of the University of Montana.

(Section 2.) That said forestry school shall be known and designated as "The Department of Forestry of the University of Montana."

(Section 3.) The state board of education is hereby empowered and given authority to make all necessary rules and regulations with reference to the conduct and management of the said forestry school; to map out and provide for the courses of study to be pursued by students attending said forestry school; to obtain and provide for necessary quarters, equipment and books therefor, and to retain and hire the necessary professors and instructors to instruct the students therein.

(Section 4.) The sum of six thousand (\$6,000) dollars is hereby appropriated for the maintenance and conduct of the said forestry school to February 28, 1914, which money shall be used exclusively for the benefit of said forestry school.

(Section 5.) The sum of six thousand (\$6,000) dollars is hereby appropriated for the maintenance and conduct of said forestry school to February 28, 1915, which money shall be used exclusively for the benefit of said forestry school.

(Section 6.) This act shall be in full force and effect from and after its passage and approval by the governor. [Approved March 21, 1913; Laws 1913, c. 131, p. 482.]

§ 688i. Biological Station in Flathead County.

The sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of constructing a Biological Station on the land now owned by the state university in Flathead county, Montana.

Said station shall be constructed under the direction of the officers of said university, in such manner and form as they shall deem best, and all expenditures in connection with such construction shall be approved by the state board of examiners. [Approved March 10, 1911; Laws 1911, c. 137, p. 388.]

§ 688j. Law School at State University.

(Section 1.) There is hereby created and established in this state and located at the city of Missoula, a law school, as a department of the University of Montana.

(Section 2.) That said law school shall be known and designated as "The Law Department of the University of Montana."

(Section 3.) The state board of education is hereby empowered and given authority to make all necessary rules and regulations with reference to the conduct and management of the said law school; to map out and provide for the courses of study to be pursued by students attending said law school; to obtain and provide for necessary quarters, equipment and books therefor, and to retain and hire the necessary professors and instructors to instruct the students therein.

(Section 4.) The sum of six thousand dollars (\$6,000) is hereby appropriated for the maintenance and conduct of said law school to February 28, 1912, which money shall be used exclusively for the benefit of said law school.

(Section 5.) The sum of six thousand dollars (\$6,000) is hereby appropriated for the maintenance and conduct of said law school to February 28, 1913, which money shall be used exclusively for the benefit of said law school.

(Section 6.) This act shall be in full force and effect from and after its passage and approval by the Governor. [Approved February 17, 1911; Laws 1911, c. 31, p. 50.]

§§ 692-695. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 97.

§§ 707, 708. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 97.

§§ 699-701. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 97.

§§ 735-737. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 97.

§§ 703, 704. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 97.

§ 769a. Creation of Northern Montana Agricultural and Manual Training School.

(Section 1.) The Northern Montana Agricultural and Manual Training School is hereby established, to be located on the Fort Assinniboine military reservation aforesaid. It is hereby declared to be a body politic and corporate with power to sue and be sued, and receive property by gift, purchase, devise or bequest. It has for its object instruction and education in the English language, literature and mathematics, mechanic arts, agricultural chemistry, animal and vegetable anatomy and physiology, and veterinary art, entomology, geology, and such other natural sciences as may be prescribed by the state board of education, political, rural and household economy, agriculture, horticulture, moral philosophy, history, book-keeping and especially the application of science and the mechanical arts to practical agriculture in the field, and irrigation and use of water for agricultural purposes; also all that relates to an efficient, modern manual training school. [Approved March 8, 1913; Laws 1913, c. 67, p. 131.]

§ 769b. Control and Supervision of Institution.

(Section 2.) The control and supervision of such school is vested in the state board of education which may prescribe all rules and regulations therefor; and which shall take possession and control of the lands and buildings herein mentioned, within ten days after the state of Montana shall become the owner thereof, and proceed to carry out the provisions of this act, so far as it relates to their duties. [Approved March 8, 1913; Laws 1913, c. 67, p. 132.]

§ 769c. Experiment Station.

(Section 3.) There is also established and shall be located on the lands and in the buildings aforesaid in connection with such Agricultural School, an Agricultural Experimental Substation to aid in acquiring and diffusing among the people of the state of Montana useful and practical information on subjects connected with field agriculture, and to promote scientific investigation and experiments respecting the principles and application of agricultural science, which experimental substation is established and under the direction of the directors of the Montana Agricultural Experiment Station, located at Bozeman, Montana, and under the general control of the state board of education. [Approved March 8, 1913; Laws 1913, c. 67, p. 132.]

§ 769d. Gifts for Repair of Buildings.

(Section 4.) The state board of education is hereby authorized and empowered to accept such gifts of money or other property as may be tendered to aid in repairing such buildings as are now located at Fort Assinniboine, and putting the same in condition to carry out the purposes of this act and for installing the necessary apparatus to initiate the work of said school. [Approved March 8, 1913; Laws 1913, c. 67, p. 132.]

§ 769e. Executive Board.

(Section 5.) The state board of education, by and with the approval of the Governor, shall designate and appoint an executive board, consisting of three members, at least two of whom shall be residents of Hill county, and the principal of the school which executive board shall have the immediate direction and control of the affairs of said school, subject only to the general supervision and control of the state board of education. The members of said executive board shall serve during the term of the state board of education, unless sooner removed by the Governor, with or without cause. [Approved March 8, 1913; Laws 1913, c. 67, p. 133.]

§ 769f. Principal and Faculty.

(Section 6.) The executive board is authorized to choose and appoint a principal and faculty of said school, who shall serve for such time and receive such compensation as the executive board may prescribe, subject to the approval of the state board of education. [Approved March 8, 1913; Laws 1913, c. 67, p. 133.]

§ 769g. Secretary and Treasurer.

(Section 7.) The executive board shall appoint a secretary thereof, who may also act as treasurer of said board and who may not be a member thereof, and such secretary and treasurer shall give bond, with good and sufficient surety or sureties, to be approved by the executive board, for the faithful performance of his duties, and for the faithful accounting for and paying over to the state board of education, to and for the use of said school, all moneys received by him as treasurer, in such sum as said state board of education shall prescribe. [Approved March 8, 1913; Laws 1913, c. 67, p. 133.]

§ 769h. Appropriation to Purchase Land.

(Section 8.) The sum of five thousand (\$5,000) dollars, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in

the state treasury not otherwise appropriated, to pay for the lands herein mentioned to the government of the United States, and the state auditor is authorized to draw his warrant therefor and the state treasurer is hereby authorized and directed to pay for said lands, at the rate of two dollars and fifty cents per acre, whenever the President of the United States shall grant the same to the state of Montana in accordance with the act of Congress hereinbefore referred to, the Governor is hereby directed to accept said lands when granted by the President. [Approved March 8, 1913; Laws 1913, c. 67, p. 133.]

§ 769i. Appropriation for Experimental Substation.

(Section 9.) The further sum of five thousand (\$5,000) dollars or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, which money shall be expended under the directions of the state board of education for the equipment and maintenance of an Experimental Substation at Fort Assinniboine and to take advantage of the offer of the government of the United States, to donate the buildings thereon to the state of Montana.

(Section 10.) All acts and parts of acts in conflict with this act are hereby repealed.

(Section 11.) This act [§§ 769a-769i] shall be in full force and effect on and after the 4th day of July, 1913. [Approved March 8, 1913; Laws 1913, c. 67, p. 134.]

§ 769j. Agricultural Extension Work—Acceptance of Terms of Act of Congress.

(Section 1.) The state of Montana hereby accepts and assents to the terms and provisions of the act of Congress, approved May 8, 1914, entitled:

“An act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of an act of Congress approved July second, eighteen hundred and sixty-two, and of Act supplementary thereto, and the United States Department of Agriculture.”

(Section 2.) The president of the Agricultural College of the state of Montana is hereby authorized to enter into all necessary agreements with the Secretary of Agriculture of the United States, relative to the receipt and expenditures of all moneys paid to the state of Montana, or to such Agricultural College under the provisions of said act, and to receive and expend such money in accordance with the provisions of said act of Congress, and the agreement so made with said Secretary of Agriculture. [New section approved February 18, 1915; Laws 1915, c. 19, p. 29.]

§ 769k. Grain Laboratory at Experiment Station—Samples and Tests of Grains.

(Section 1.) There is hereby established at the Montana Agricultural Experiment Station, a state grain laboratory for the study of the milling and baking quality of wheat raised in Montana, and for the study of the germinating capacity, quality and purity of field crop seeds grown and sold in the state of Montana, as far as this may be determined. This laboratory shall be known as the Montana Grain Laboratory.

(Section 2.) The purpose of this laboratory shall be to make the studies necessary to establish the grade and quality of the wheat and other

grains grown in the state by scientific and accurate tests. To the end that such facts established by scientific experiments, publicly disseminated, may aid the grain growers and dealers in the state to establish the full market value of their products in the markets of the world.

Samples of the different kinds of wheat grown under the various conditions existing in the state of Montana, shall be collected and systematic study shall be made of each of these to determine their milling and baking value. Tests shall also be made of samples which may be sent to the laboratory by growers and dealers in the state of Montana, provided postage and transportation charges are prepaid and the method of taking the samples conforms to the regulations prescribed by the director in charge of the laboratory.

The director in charge of the laboratory shall keep an accurate record of all samples submitted, and report the results of all the milling and baking tests which are made in the laboratory to the parties submitting the samples, as soon as possible after such tests have been completed. The results from all the tests made at the laboratory must be reported in the form of bulletins or pamphlets, whenever the data accumulated shall be sufficient for such publication.

(Section 3.) Any citizen of the state of Montana by conforming to the regulations prescribed by the State Grain Laboratory of the Montana Agricultural Experiment Station and by prepaying postage or transportation charges, may send a sample or samples of seed to the State Grain Laboratory of the Montana Agricultural Experiment Station, which shall determine the percentage of germination, quality [and] purity of each sample sent. The results of these determinations shall be reported upon free of charge to the person sending such samples. Such of these tests as are of value to the public shall be reported in bulletin or pamphlet form, at least once a year.

(Section 4.) This laboratory shall be under the general supervision of the Director of the Montana Agricultural Experiment Station. It shall be directly in charge of the agronomist of the Montana Agricultural Experiment Station, who shall be known as the director in charge of the laboratory, in co-operation with the board of directors of the Montana Seed Growers' Association shall make such rules and regulations as are necessary to the proper conduct of the laboratory, under the purposes as outlined in section 2.

(Section 5.) The director in charge of the laboratory, under the direction of the director of the Montana Agricultural Experiment Station, shall have authority to employ a competent assistant and such help as is needed to properly carry on the laboratory. They shall have authority to incur expenditures for travel, express, freight, postage, etc., necessary to collect samples for study, and to properly carry on the work of the laboratory.

(Section 6.) There is hereby appropriated out of the moneys in the state treasury, not otherwise appropriated, the sum of two thousand (\$2,000) dollars for the equipment of a state Grain Laboratory; and for the maintenance of such a laboratory, there is hereby appropriated, the sum of two thousand (\$2,000) dollars for the year ending March 1, 1914, and two thousand (\$2,000) dollars for the year ending March 1, 1915.

(Section 7.) Samples of wheat sent in by individuals, when the results from the testing of which no general or market value, shall be charged a fee sufficient to cover the cost of making the test. Fees, so collected, are to be deposited in a fund in charge of the director of the experiment sta-

tion, to be used in support of the laboratory. Any surplus remaining in this fund at the close of the state's biennium, shall be turned over to the state treasurer and shall revert to the state general fund. [Approved March 18, 1913; Laws 1913, c. 119, p. 463.]

§ 769l. Purchase of Land for Agricultural College and Experiment Station.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That the Montana state board of land commissioners are hereby authorized and directed to purchase for the benefit and use of the Agricultural Experiment Station connected with and a department of the Agricultural College, at Bozeman, Montana, the following lands situated in Gallatin county, Montana, to wit: The northwest quarter of section Fourteen (14), in township two (2), south of range five (5) east, and blocks numbered eight (8) and nine (9) in Capitol Hill Addition to the city of Bozeman, Montana.

(Section 2.) That the said Montana state board of land commissioners are empowered and directed to use for the payment of the purchase price of the lands described in section 1 of this act, the sum of eighteen thousand and eight hundred dollars (\$18,800) or so much thereof as may be necessary out of the proceeds from the sale of lands granted to the state of Montana for the use and support of an Agricultural College in accordance with section five (5) of the act of Congress entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2, 1862, and by section sixteen (16) of an act of Congress approved February 22, 1889, entitled, "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and to be admitted into the Union on an equal footing with the original states and to make donations of lands to such states"; that of the sum of eighteen thousand eight hundred dollars (\$18,800) mentioned in this section, the sum of sixteen thousand dollars (\$16,000) is to be used for the purchase of the northwest quarter of section fourteen (14), in township two (2), south of range five (5) east, situate in Gallatin County, Montana, and the sum of two thousand eight hundred dollars (\$2,800) is to be used for the purchase of blocks numbered eight (8) and nine (9) in Capitol Hill Addition to the city of Bozeman, Montana.

(Section 3.) That the title to said lands when purchased shall vest in the state of Montana and whenever said lands are sold or otherwise disposed of the proceeds therefrom shall be returned to the permanent fund of the Montana Agricultural College. [Approved March 2, 1909; Laws 1909, c. 42, p. 51.]

§ 769m. Purchase of Further Land for Agricultural College.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That the Montana state board of land commissioners are hereby authorized and directed to purchase for the benefit and use of the Agricultural College, at Bozeman, Montana, the following lands situated in Gallatin county, Montana, to wit: Blocks numbered six (6), seven (7), ten (10), eleven (11), and twelve (12) in Capitol Hill Addition to the city of Bozeman, Montana.

(Section 2.) That the said Montana state board of land commissioners are empowered and directed to use for the payment of the purchase price

of the lands described in section 1 of this bill, not to exceed the sum of six thousand and seven hundred dollars (\$6,700), out of the proceeds from the sale of lands granted to the state of Montana for the use and support of an Agricultural College in accordance with Section Five (5) of the act of Congress entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2, 1862, and by section sixteen (16) of an act of Congress approved February 22, 1889, entitled, "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and to be admitted into the Union on an equal footing with the original states and to make donations of land to such states.

(Section 3.) That the title to said lands when purchased shall vest in the state of Montana and whenever said lands are sold or otherwise disposed of the proceeds therefrom shall be returned to the permanent fund of the Montana Agricultural College. [Approved February 27, 1915; Laws 1915, c. 38, p. 55.]

§ 769n. County Agriculturist and His Salary.

The county commissioners of any county in the state of Montana may appropriate out of the general fund of the county treasury one hundred (\$100) dollars per month, for the purpose of paying part salary and expenses of a county agriculturist to be at the service of the farmers of that county, such sum as agreed upon to be paid monthly to the treasurer of the Montana State College of Agriculture and Mechanic Arts to be applied to the salary and expenses of said county agriculturist. The said county agriculturist shall be nominated by and be under the control of the president of the Montana State College of Agriculture and Mechanic Arts, or under such agent or agents as he may appoint; such appointment, however, to be approved by the county commissioners. [Amended March 3, 1915; Laws 1915, c. 54, p. 82.]

Original provision. Laws 1913, c. 109, p. 451.

§ 776. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 97.

§ 786. Investment of State Normal School Fund.

The state board of land commissioners is hereby authorized and required to invest and keep invested all moneys belonging to the permanent normal school fund, in any state, county, city, school district or "bonds of irrigation districts organized under the laws of this state," and in any state capitol building bonds now issued or which may be hereafter issued, and in first mortgages on farm land in this state, as provided in section 2196 as herein amended, which in its judgment is a safe investment. The board may make its bid for any state securities in the same manner as private persons, and under no restrictions other than those imposed upon private persons seeking investments therein." [Amendment approved March 18, 1913; Laws 1913, p. 467. Prior amendment; Laws 1909, p. 104.]

CHAPTER II.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

§ 791. Election, Qualification, Oath and Bond.

There shall be chosen by the qualified electors of the state, at the time and place of voting for members of the legislature, a superintendent of public instruction, who shall have attained the age of thirty years at the time of his election, and shall have resided within the state two years next preceding his election, and is the holder of a state certificate of the highest grade, issued in some state, and recognized by the state board of education, or is a graduate of some university, college, or normal school recognized by the state board of education as of equal rank with the University of Montana or the State Normal School. He shall hold his office at the seat of government, for the term of four years from the first Monday in January following his election, and until his successor is elected and qualified. Before entering upon his duties he shall take the oath of a civil officer and give bond in the penal sum of ten thousand dollars, with not less than two sureties, to be approved by the Governor and Attorney General. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 207.]

§ 792. General Powers.

1. He shall have the general supervision of the public schools of the state. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 207.]

2. *Official Staff.*—The superintendent of public instruction shall have power to appoint one deputy, who shall receive an annual salary of twenty-one hundred dollars, one rural school inspector at a salary of twenty-one hundred dollars, and two clerks at an annual salary of twelve hundred dollars each. Such deputy, rural inspector and clerks shall perform such duties pertaining to the office as the superintendent may direct.

§ 793. Duties.

1. *Official Files and Records.*—The superintendent shall preserve in his office all books, maps, charts, works on education, school registers, school reports and school laws of other states and cities, plans for school buildings and other articles of educational interest and value which may come into his possession as such officer and at the expiration of his term shall deliver them, together with the reports, statements, records and archives of his office to his successor.

2. *Blanks and Laws.*—He shall cause to be printed, and furnished to the proper officers or persons all school registers, reports, statements, notices and blanks for returns needed or required to be used in the schools or by the school officers, in the state. He shall furnish through the county superintendent to each trustee, and clerk of each district and to each superintendent or principal of each district a copy of the school laws.

3. *Official Records.*—He shall keep a record of his official acts, and shall file in his office all appeals and papers pertaining to them.

4. *Official Seal.*—He shall provide and keep a seal which shall be the official seal of the state superintendent of public instruction, and by which all of his official acts may be authenticated.

5. *Printing of School Laws.*—He shall at least once in four years cause to be printed the school laws of the state, with such notes and decisions thereon as may seem to him advisable, and shall furnish them as they are needed to the school officers in the state.

6. *Report.*—He shall on or before the first day of December preceding the biennial session of the legislative assembly, make and transmit to the Governor a report showing:

(a) The number of school districts, schools, teachers employed and pupils taught therein, and the attendance of pupils and studies pursued by them.

(b) The financial condition of the schools, their receipts and expenditures, value of schoolhouses and property, cost of tuition and wages of teachers.

(c) The condition, educational and financial, of the normal and higher institutions connected with the school system of the state, and, as far as it can be ascertained, of the private schools, academies and colleges of the state.

(d) Such general matters, information and recommendations relating to the educational interest of the state as he may deem important.

7. *Publication of Report.*—Fifteen hundred copies of the report of the superintendent of public instruction shall be printed biennially, in the month of December preceding the session of the legislative assembly. Two copies shall be furnished to each of the members of the legislative assembly, one copy to each county superintendent of the state, one copy to the clerk of each school board, two to each state officer, one to each state and territorial superintendents; fifty copies shall be filed in the office of the superintendent of public instruction and ten in the state historical library. The balance shall be distributed among the various colleges, universities and other libraries of the United States.

8. *Course of Study.*—He shall prepare or cause to be prepared with the co-operation and approval of such educators as may be named by the state board of education a course of study for all the public elementary and high schools of the state, and shall prescribe to what extent the same is to be used.

9. *Institute and Summer Schools. Rules.*—He shall prescribe with the approval of the state board of education rules and regulations for the holding of teachers' institutes, and summer schools for teachers; shall prepare with the approval of the state board of education lists of instructors for institutes and summer schools from which county superintendents shall make their appointments. He shall attend and assist at teachers' institutes and summer schools for teachers and aid, and encourage generally teachers in qualifying themselves for the successful discharge of their duties.

10. *County Superintendent.*—He shall counsel with and advise county superintendents upon all matters involving the welfare of the schools; he shall, when requested, give them written answers to all questions concerning the school law. He shall decide all appeals from the decision of the county superintendent, and may for such decision require affidavits, verified statements or sworn testimony as to the facts in issue. He shall prescribe and cause to be enforced, rules of practice and regulations pertaining to the hearing and determining of appeals, and necessary for carrying into effect the school laws of the state.

11. *Examinations.*—He shall with the approval of the state board of education, prepare all questions to be used in the examination of applicants for teachers' county certificates, and prescribe the rules and regulations for conducting all such examinations.

12. Apportionment of School Fund.—He shall between the first and tenth day of February of each year, apportion the state school fund among the several counties of the state, in proportion to the number of children of school age in each as shown by the last enumeration authorized by law. It shall be the duty of the state board of land commissioners to notify the state auditor on or before the tenth day of January of each year the amount of the state school fund subject to apportionment; and the said auditor immediately upon receipt of such notification shall issue his warrant on the state treasurer for the said amount. Thereupon the state treasurer shall certify said apportionment to the several county treasurers not later than the first Monday in March; provided, that the several county treasurers have fully complied with section 183 of "An act concerning revenue," approved March 6, 1891, in which case the county treasurers, upon receiving notice from the state treasurer of the amounts due their counties from the state school fund, may deduct said amount from the amount found due the state by their counties and remit the balance to the state treasurer. The superintendent of public instruction shall certify to the county superintendent of schools of each county the amount apportioned to that county.

13. Libraries.—He shall prepare and furnish to school officers through the county superintendents, lists of publications approved by him as suitable for school libraries, such lists shall contain also the lowest price at which such publications can be purchased and the terms. He shall also prescribe rules and instructions for the proper care and use of school libraries and such other information relative thereto as he shall think needful.

14. Temporary State Certificates.—The state superintendent may grant a temporary state certificate, at any time, to any teacher whose experience, qualifications and credentials, in his opinion, entitle such a teacher to either a state or life diploma in Montana. Such temporary state certificate, however, shall be good and valid in any county in the state for a period of one year; provided, however, that the holder of such certificate shall have it duly registered in the office of the county superintendent of schools of the county in which he is employed to teach before he begins teaching, and provided, also, that such teacher shall pay for such registration, the sum of one (\$1) dollar into the institute fund of such county.

15. Other Duties.—He shall also, as far as he shall find it practicable, address public assemblies on subjects pertaining to public schools, and shall labor faithfully in all practicable ways for the welfare of the public schools of the state and shall perform such other duties as shall be required of him by law. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 207.]

A school census is a public document which the county superintendent of schools is required by law to keep; and that officer in giving evidence may, after identify-

ing it, use it as part of his testimony as to the age of a pupil. *State v. Vinn*, 50 Mont. 39, 144 Pac. 773.

§ 794. Salary.

The annual salary of the superintendent of public instruction for all services now required of him or which may hereafter devolve upon him by law, is three thousand dollars. He shall also be paid his traveling expenses actually and necessarily incurred in the discharge of his duties, not to exceed two thousand dollars in any one year. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 207.]

§ 795. Expenses.

All necessary expenditures of money incurred by the superintendent of public instruction for postage, stationery, printing and expressage not exceeding five hundred dollars in any one year shall be paid by the state. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 207.]

CHAPTER III.**COUNTY SUPERINTENDENT OF SCHOOLS.****§ 796. General Provisions.**

1. *Qualifications.*—All persons otherwise qualified shall be eligible to the office of county superintendent of common schools without regard to sex.

2. *Election of County Superintendent.*—A county superintendent of schools shall be elected in each organized county in this state at the general election preceding the expiration of the term of office of the present incumbent, and every two years thereafter.

3. *Term.*—He shall take office on the first Monday in January next succeeding his election, and hold for two years and until his successor is elected and qualified.

4. *Oath—Bond.*—The person so elected shall take the oath or affirmation of office, and shall give an official bond to the county in a sum to be fixed by the board of county commissioners of said county.

5. *Vacancy.*—The county commissioners of any county shall by appointment, fill any vacancy that may occur in the office of county superintendent until the next general election. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 211.]

§ 797. General Powers.

The county superintendent shall have general supervision of the public schools in his county. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 212.]

§ 798. Duties.

1. *As to State Superintendents.*—He shall carry into effect all instructions of the state superintendent given within his authority. He shall distribute to the proper officers and to teachers all blanks furnished by the state superintendent and needed by such officers and teachers.

2. *Visiting Schools.*—He shall visit every public school under his supervision at least once each official year, and oftener if he shall deem it necessary to increase its usefulness. He shall at such visits carefully observe the conditions of the school, the mental and moral instruction given, methods employed by the teacher in teaching, training and drill, the teacher's ability, and progress of the pupils. He shall advise and direct the teacher in regard to the instruction, classification, government and discipline of the school and the course of study. He shall keep a record of such visits and by memoranda indicate his judgment of the teacher's ability to teach and govern and the condition and progress of the school, which shall be open to inspection to any school trustee. During his visits to the schools of his county the county superintendent shall consult with the trustees and clerks of school districts upon all matters relating to the good and welfare of their schools and shall instruct

them, whenever necessary, in their duties relating to the reports to be made out by them and forwarded to him annually as the law requires.

3. *Trustees' Meetings.*—He shall from time to time in convenient places hold trustees' meetings at which matters relating to the good of the schools shall be discussed.

4. *Issue Temporary Certificates.*—He shall have power to issue, if he deem it proper to do so, temporary certificates, valid until the next regular examination, to persons holding certificates of like grade granted in other counties, or upon any certificate or diploma possessed by the applicant showing his fitness for the profession of teaching; provided, that no person shall be entitled to receive such temporary certificate more than once in the same county.

5. *County Board of Educational Examiners.*—He shall serve on the county board of educational examiners.

6. *Preside at Institutes.*—He shall preside over all teachers' institutes held in his county, and shall elect suitable persons to instruct therein from the list of teachers commissioned by the state board of education, and recommended by the state superintendent.

7. *School Libraries.*—He shall exercise supervision over the school libraries of the county and aid in the selection of books for the same.

8. *Truant Officer.*—He shall act as truant officer in districts of the third class when no other provision is made.

9. *Apportionment School Moneys.—Warrants.*—The county superintendent shall apportion all school moneys to the school districts in accordance with the provisions of this title quarterly, and he may make apportionments at such other times as may be required or deemed necessary for the convenience of school officers. He shall certify to the several district clerks and county treasurers the amount so apportioned to the several districts, and the trustees shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrant shall show for what purpose the money is required, and no such warrant shall be drawn unless there is money in the treasury to the credit of such district; provided, that school trustees shall have the authority to issue warrants in anticipation of school moneys which have been levied but not collected, for the payment of current expenses of schools, but such warrants shall not be drawn in any amount in excess of the sum already levied.

10. *Notify County Treasurer.*—He shall notify the county treasurer to withhold payment of warrants issued to teachers not holding valid certificates.

11. *Controversies.*

(a) He shall decide all matters in controversy arising in his county in the administration of the school law or appealed to him from the decision of school officers or boards. An appeal may be taken from his decision, in which case a full written statement of the facts, together with the testimony and his decision in the case, shall be certified to the state superintendent for his decision in the matter, which decision shall be final, subject to adjudication or the proper legal remedies in the state courts.

(b) The county superintendent shall have power to administer the oath of office to all subordinate school officers, and in case of appeal to him from the decision of school officers or board, or revocation of the certificate of a

teacher or in any other controversy or question brought to or coming before him in the administration of school laws for opinion, order or decision, he shall have the power to administer oaths to witnesses; but he shall not receive pay for administering such oaths.

12. Boundaries of School Districts.—The county superintendent shall inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the board of county commissioners, and keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting, or are incorrectly described, he shall change, harmonize and describe them, and make a report of such action to the commissioners; and on being ratified by the commissioners, the boundaries and descriptions so made shall be the legal boundaries and descriptions of the districts of that county. The county superintendent shall furnish the several district clerks with descriptions of the boundaries of their respective districts.

13. Creation of New Districts.—He shall hear and pass upon all petitions for the creation of new school districts.

14. Attach Contiguous Territory.—He shall attach to contiguous districts territory not a part of any district.

15. Census to be Transmitted to Bureau of Agriculture, Labor, and Industry.—It shall be the duty of the county superintendent of schools to prepare and transmit within thirty days after he receives the school census from the district clerk, a copy of the census showing the name, sex, age and date of birth of each child under twenty-one years of age residing in the county, together with the names of the parents or guardians of such children to the commissioner of the bureau of agriculture, labor and industry. No county superintendent shall be paid his salary for the last month in his official year until he presents to the county commissioners the receipt of the commissioner of the bureau of agriculture, labor and industry for such annual census report.

16. Records.—He shall keep a record of his official acts. He shall preserve all books, maps, charts and apparatus sent him as a school officer, or belonging to his office. He shall file all reports and statements from teachers and school boards and shall turn them over to his successor in office.

17. Annual Reports.—He shall, on or before the first day of November of each year, make and transmit an annual report to the superintendent of public instruction, containing such statistics, items and statements relative to the schools of the county, as may be required and prescribed by the state superintendent. Such reports shall be made upon and conform to the blanks furnished by the state superintendent of public instruction for that purpose. He shall not be paid his salary for the last month in his official year until he presents to the county commissioners the receipt of the superintendent of public instruction for such annual report.

18. Office Days.—He shall keep his office open five days in every month and give due notice of the same.

19. Clerk.—The county superintendent of counties having fifty or more rural teachers, is authorized to appoint one clerk, and the county superintendent of counties having fewer than fifty rural teachers may, with the permission of the county commissioners, appoint a clerk, at a salary to be fixed by the board of county commissioners. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 212.]

§ 799. Expenses.

The county commissioners shall furnish the county superintendent with a suitable office. They shall also furnish him with all necessary stationery and postage, and they may in their discretion upon his request also furnish him, for the use of the public schools in his county, useful charts, maps, and models; provided, that not more than \$200 a year may be expended for stationery, postage, maps, charts and models. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 215.]

CHAPTER IV.

SCHOOL DISTRICTS.

§ 800. School District Defined.

The term "school district," as used in this title, is declared to mean the territory under the jurisdiction of a single board, designated as "board of trustees," and shall be organized in the form and manner as hereinbefore provided and shall be known as District No. of County; provided, that all school districts now existing, as shown by the records of the county superintendents, are hereby recognized as legally organized districts. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 216.]

§ 801. Classes—Number of Trustees.

All districts having a population of eight thousand or more, are, and hereafter shall be, districts of the first class. All districts having a population of one thousand, or more, and less than eight thousand, are, and hereafter shall be, districts of the second class, and all districts having a population of less than one thousand are, and hereafter shall be, districts of the third class. In districts of the first class the number of trustees shall be seven; in districts of the second class the number of trustees shall be five, and in districts of the third class the number of trustees shall be three. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 216.]

§ 802. Powers as Body Corporate.

Every school district constituted and formed as provided in this title shall be, and is hereby, declared to be a body corporate and under its own proper name or number as such corporate body may sue and be sued, contract and be contracted with and may acquire, purchase and hold and use personal or real property for school purposes mentioned in this title, and sell and dispose of the same. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 216.]

§ 803. When School District may be Created.

No school district shall be created between the first day of March and the first day of September following each year. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 216.]

§ 804. Organization of New Districts.

1. Steps.—For the purpose of organizing a new district, a petition in writing shall be made to the county superintendent, signed by the parents or guardians of at least ten census children, between the ages of six and twenty-one years, residing within the boundaries of the proposed new districts and residing at a greater distance than two miles from any schoolhouse, which

petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing within the boundaries of the proposed new district, at the date of presenting said petition. The county superintendent shall give notice to parties interested by posting, or causing to be posted, notices at least ten days prior to the time appointed by him for considering said petition, in at least three of the most public places in the proposed new district, and one on the schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one of the most public places in said old district, and shall on the day fixed in the notice proceed to hear said petition, at the place designated in such notice, which must be either at the courthouse of the county or else at a schoolhouse in one of the school districts affected, unless a protest in writing signed by at least a majority of the tax-paying freeholders residing within such proposed school district shall be filed with the county superintendent of schools before or at the time fixed in the notice of the hearing of said petition, and in that event such new and proposed school district shall not be created. If no such protest be filed then the county superintendent, if he deem it advisable, shall make an order establishing said district and describing the boundaries thereof, and from an order made by the county superintendent of schools an appeal may be taken by three resident taxpayers of said new district, or by three resident taxpayers, of the remaining portion of the old district, to the board of county commissioners within thirty days, and a hearing had thereon, and decision rendered by said board, which shall be final; provided, that should the county superintendent refuse to make an order establishing said new district, an appeal may be taken by three resident taxpayers of said new district, to the board of county commissioners, a hearing had and a decision rendered by said board which shall be final; provided, that no new school district shall be established which does not contain property of an assessed valuation of at least ten thousand dollars (\$10,000) as shown by the last official assessment-roll of the county in which said proposed school district is located; provided, further, that there shall be at least ten census children left in the remaining portion of the original district and a property valuation, as shown by the last official assessment-roll of the county, of fifteen thousand dollars (\$15,000) at least. The appeals in this section mentioned shall be in writing, subscribed by the parties taking the appeal and shall recite sufficient facts to show their rights to appeal hereunder, that it is an appeal from the decision rendered, and such appeal shall be filed with the county superintendent within the time allowed for appeal.

2. *Selection of Trustees.*—When a new district is organized, such trustees of the old district as reside within the limits of the new one shall be trustees in the new district, and the county superintendent must appoint the remaining trustees for the new and the old district, who shall hold office until the next annual election.

3. *Apportionment of Moneys to New District.*—No new district, formed by the subdivision of an old one, shall be entitled to any share of public money belonging to the old district until the school has actually been taught one month in the new district, and unless within eight months from the order of the county superintendent granting such new district, a school is opened, the action making a new district shall be void and all elections or appointments of trustees or clerks made in consequence of such action, and all rights and office of parties so elected or appointed shall cease and determine.

4. *Division of District Funds and Property.*—When a new district is formed from one or more old ones, the school funds remaining to the credit of the old district, after providing for all outstanding debts, except debts incurred for building and furnishing schoolhouses, shall be divided as follows: The basis for the division of the school fund shall be the school population, as shown by the last school census before the division of the district or districts occurred, and shall apply to such funds as remain to the credit of said old district or districts at the time of the organization of said new district, and said district shall receive funds in proportion to its per cent of the said census. In case of division, each district shall own and hold all permanent property, such as sites, schoolhouses and furniture situated within its boundaries. All division of funds under this provision shall be made by the county superintendent, and when there are unpaid special taxes on the county tax book belonging to a district at the date of its division, the county treasurer, upon being notified of such division by the county superintendent, shall retain all moneys received in payment of such special tax until the same shall be apportioned by the county superintendent, whose duty shall be to apportion said money quarterly between the factions of the divided district according to the location of the property on which said tax was levied. At the first apportionment after the organization of a new district, the county superintendent shall apportion to such district its per capita proportion of the general fund, but no money, either from the general or special fund, shall be paid out of the county treasury on account of such district, until a school shall have been taught therein one month; provided, that any new district formed by the division of an old one shall be entitled to its apportionment, where the time that school was maintained in the old district before division, and in the new one after division, shall be equal to at least four months. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 216.]

§ 805. Method of Procedure—Division of School District Having More Than One Schoolhouse.

1. Whenever any school district has more than one schoolhouse, and the school electors residing in any particular portion of said district, in which portion there is a schoolhouse, desire a division of said district, they shall present a petition in writing to the board of trustees of said school district, signed by a majority of the school electors of that portion of said school district out of which they desire to create a new school district which petition shall describe the boundaries of the proposed new school district. The board of trustees of said district at any regular meeting or at any special meeting called for that purpose, may approve or deny the said petition in their discretion, and shall enter their approval or denial upon the minutes of said meeting and transmit the original petition together with a certified copy of the minutes of said meeting to the county superintendent of schools. If the board of trustees of said school district shall approve of the division of said school district, and no appeal is taken from their decision as herein provided, the county superintendent of schools may thereupon make an order establishing such new district and defining its boundaries. Any three resident taxpayers of either the old or new district may within thirty days appeal from the decision of the said board of school trustees to the county superintendent of schools and may, within thirty days appeal from any de-

cision or order made by the county superintendent of schools to the county commissioners whose decision shall be final.

2. *Selection of School Trustees.*—Trustees shall be selected as provided in section 404, subdivision 2 of this act.

3. *Distribution of Indebtedness.*—If, at the time such new district is created, there is any indebtedness against such old school district, then the board of county commissioners of the county in which such districts are located shall, at its first regular meeting after the order creating said new district is made, apportion such indebtedness between said districts, by first deducting from said indebtedness the amount of all moneys in the treasury belonging to the sinking fund of said old district, and then apportioning the remainder of the indebtedness between the respective districts in proportion to the value of the school property remaining in the old district to the value of the school property in the new district.

4. *Trustees Issue Interest Bearing Warrants.*—That upon the adjustment of said indebtedness, it shall be the duty of the board of trustees of such new district to cause to be made out, issued and delivered to the trustees of such old district, warrants equal to the amount of such indebtedness apportioned to such new district, which warrants, upon presentation, shall be indorsed by the treasurer of the county, "not paid for want of funds," and shall thereafter draw interest at the rate of six per cent per annum.

5. *County Commissioners Levy Tax for Interest Bearing Warrants.*—Until said warrants are paid, it shall be the duty of the board of county commissioners of said county to annually levy a tax upon the taxable property of such new school district sufficient to pay the interest on said warrants, and the money realized from the levy of such taxes shall be, by the county treasurer, kept in a special fund to be used solely for the purpose of paying the interest and principal of said warrants.

6. *Trustees may Issue Bonds.*—The school trustees of such new school district shall have, and are hereby given the power and authority to issue on the credit of their district coupon bonds and sell and dispose of the same for the purpose of providing the necessary funds to pay such warrants. Such bonds shall be issued and disposed of upon the conditions and in the manner provided in section 2030 [§ 948 herein] of this act, except that said bonds shall recite in the body of each bond that, "this bond is issued for the purpose of providing funds to pay outstanding warrants."

7. *Incorporated Towns and Cities not Included in New District.*—That no territory within the corporate limits of any incorporated city or town shall be included in any new school district formed or created under the provisions of this act. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 219.]

§ 806. District Boundaries.

The boundaries of any district cannot be changed, save in forming new districts, except as herein provided. A majority of the resident freeholders residing in territory which is a part of any organized school district, may present a petition in writing to the county superintendent, asking that such territory be transferred to or included in any other organized district to which said territory is contiguous. The petition shall prescribe the territory which it is proposed to transfer or include, and shall also state the reason for de-

siring such change and the number of children of school age, if any, residing in the territory to be transferred or included.

The county superintendent shall file said petition in his office immediately on receipt thereof, and shall give notice to the parties interested by posting notices at least ten days prior to the time appointed for considering said petition, one of which shall be in a public place in the territory which is proposed to be transferred or included, and one on the door of each schoolhouse in each district affected by the change, or if there be no schoolhouse in such district then in some public place in such district or districts, and at the time stated in said notice for the consideration of such petition, which shall not be less than ten days nor more than thirty days after the date of filing such petition, he shall proceed to hear such petition, and if he deem it advisable and for the best interests of the territory proposed to be transferred or included, he shall grant said petition and make an order fixing the boundaries of the districts so changed, which order shall be final, unless an appeal be taken to the board of county commissioners of the county wherein such districts are located within thirty days thereafter, and upon hearing thereof the decision of said board shall be final. All the papers, documents and records in the case shall be certified by the county superintendent to the county commissioners for their determination of the matter on appeal; provided, that lands lying contiguous to a district and not attached to any district, shall be attached to an adjacent district by the county superintendent of his own motion; and provided, further, that all districts shall consist of contiguous territory. [Amendment approved March 8, 1915; Laws 1915, c. 112, p. 249.]

§ 807. Consolidated Districts.

1. *Two Methods.*—That two or more school districts may be consolidated either by the formation of a new district, or by the annexation of one or more districts to an existing district, as hereinafter provided.

2. *Order of Procedure—A Petition.*—Whenever the county superintendent of schools receives a petition signed and acknowledged by a majority of the resident freeholders of each district affected, qualified to vote at school elections, praying for consolidation, he shall within ten days cause a ten days' posted notice to be given by the clerk in each district, such notice to be posted in three public places, in each district, of an election in such district at a time and place specified in each notice, to vote on the question of consolidation.

The votes at such election shall be by ballot which shall read "For Consolidation" or "Against Consolidation." The presiding officer at such election shall within ten days thereafter certify the result of the vote to the county superintendent of the county in which the district mainly lies.

If the majority of the votes cast in each district be for consolidation, it carries, and the superintendent, within ten days thereafter shall make proper orders to give effect to such vote and shall thereafter transmit a copy thereof to the county clerk and recorder of each county in which any part of any district lies, and the clerk of each district affected. If the order be for the formation of a new district, it shall specify the name and number of such district, and he shall appoint three trustees to serve until the first Saturday in April succeeding.

At the regular election succeeding there shall be elected by the regularly qualified electors three trustees, one of whom shall serve for one year, one for two years, and one for three years. The election of trustees and terms shall be the same as for other districts under the general school laws.

3. *Disposition of Funds—Property—Records.*—In case of annexation of any district or districts to any existing district, as herein provided, the proper officers of the annexed districts, within ten days from the receipt of a copy of such order, shall turn over to the proper officers of the district to which they are annexed, all records, funds, and effects of such annexed district. In case of the formation of a new district, the proper officers of the discontinued districts in like manner within ten days after the organization of the new district, shall turn over the records, funds, and effects of such old districts to the proper officers of the new districts.

In case of consolidation of districts by annexation the title to schoolhouses and sites of the separate districts, shall vest in the new consolidated district and the officers of the old district shall continue to exercise their duties until the officers of the new consolidated district have been elected and have qualified.

4. *How Governed.*—Consolidated school districts shall be governed by the general school laws of the state.

5. *Bonded Debts.*—Bonded indebtedness of any districts merged by consolidation shall be assumed by the consolidated district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 222.]

§ 808. Joint Districts.

1. *Formation.*—The joint districts (districts lying partly in one county and partly in another) may be formed in the same manner as other new districts are formed, except that the petition herein provided for must be made to the county superintendent of each county affected; but in the case of joint districts, all of the provisions herein enumerated for the formation of a new district must be by concurrent action of the superintendent of each county affected.

2. *Control.*—Whenever a district lies partly in one county and partly in another, the county superintendent must apportion to such district such proportion of the school money to which such district is entitled as the number of school census children residing in that portion of the district situated in his county bears to the whole number of school census children in the whole district. The trustees and teachers of joint districts must make to the superintendent of each county in which the district is located the reports which other trustees and teachers are required to make, and also the number of pupils attending the school from each county; and all other acts which from their nature should be separately kept and done, as if each portion of said joint district belonging to each county were an entire district in the respective counties. The teachers of such joint district shall have certificates from the superintendent of the county in which the schoolhouse is located. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 223.]

CHAPTER V. SCHOOL TRUSTEES.

§ 809. Qualifications of.

Any person, male or female, who is a qualified voter at any election under this act, shall be eligible to the office of school trustee in such district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 224.]

§ 810. Number of.

In districts of the first class, the number of trustees shall be seven, in districts of the second class the number of trustees shall be five, and in districts of the third class the number of trustees shall be three. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 224.]

§ 811. Election.

1. An annual election of school trustees shall be held in each school district in the state on the first Saturday in April, in each year, at the district schoolhouse, if there be one, and if there be none, at a place designated by the board of trustees.

2. Districts of the Second and Third Class.

(a) *Nomination of.*—In districts of the second and third class, the names of all candidates for membership on the school board must be received and filed by the clerk and posted at each polling place at least five days next preceding the election. Any five qualified electors of the district may file with the clerk the nominations of as many persons as are to be elected to the school board at the ensuing election.

(b) *Conduct of Election.*—In districts of the second and third classes, the election of school trustees shall be held and conducted under the supervision of the board of school trustees. The clerk of the school district must not less than fifteen days before the election required under this act, post notices in three public places in said district, and in incorporated cities in each ward, which notices must specify the time and place of election, and the hours during which the polls will be open. The trustees must appoint by an order entered in their records three qualified electors of said district, to act as judges at such election, and the clerk of the district shall notify them by mail of their appointment. If the judges named are not present at the time for opening the polls, the electors present may appoint judges, and the judges so appointed shall designate one of their number to act as clerk. The voting must be by ballot, without reference to the general election laws in regard to nominations, form of ballot, or manner of voting, and the polls shall be open for such length of time as the board of trustees may order; provided, that such polls must be open from 2 P. M. to 6 P. M.

3. Districts of the First Class.

(a) *Nomination of.*—In districts of the first class no person shall be voted for or elected, as trustee unless he has been nominated therefor by a bona fide public meeting, held in the district at least ten days before the day of election, and at which at least twenty qualified electors were present, and a chairman and secretary were elected, and a certificate of such nomination setting forth the place where the meeting was held, giving the names of the candidates in full, and if there are different terms to be filled, the term for which such candidate was nominated, duly certified by the chairman and secretary of such meeting, shall be filed with the district clerk at least eight days before the day of the election. The nomination and election of any person shall be void, unless he was nominated at a meeting as above provided at which at least twenty qualified electors were present, and his nomination certified and filed as aforesaid, and the board of trustees acting as a canvassing board shall not count any votes cast for any person, unless he has been so nominated and a certificate thereof filed as herein required.

(b) *Conduct of.*

1. *Board of Trustees to Call Election.*—The board of trustees shall at least thirty days before the annual election of school trustees, by an order entered upon the minutes of their meeting, designate and establish a suitable number of polling places and create an equal number of election precincts to correspond, and define the boundaries thereof.

2. *Notice of.*—The district clerk shall at least fifteen days before the election in districts of the first class, give notice of the election to be held in all such districts, by posting a notice thereof in three public places in the district, and in incorporated cities and towns in each ward, which notices must specify the time and place of election, the number of trustees, and the term for which they are to be elected, and the hours during which the polls will be open. Whenever in the judgment of the board of trustees the best interests of the district will be served by the publication of such notices of election some newspaper in the county, they may, by an order entered on the minutes of their meeting, direct the district clerk to publish the notice of election required to be given in districts of the first class, in some newspaper in the county.

3. *Hours of Election.*—In districts of the first class the polls must be opened at 8 o'clock A. M., and kept open until 12 o'clock M., and from 1 o'clock P. M., until 8 o'clock P. M.

4. *Judges of.*—The board of district trustees shall, at least ten days before the day of the annual election of trustees in any district of the first class, appoint three qualified electors of the district for each polling place established to act as judges of election, and the district clerk shall notify such persons by mail of their appointment. Such judges shall designate one of their number to act as clerk of such election. If the judges appointed, or any of them, are not present at the time for the opening of the polls, the electors present may appoint judges, who must be qualified electors, to act in the place of those who are absent.

5. *Ballots and Method of Voting.*—In districts of the first class, the ballot shall show the name or names of the candidates and the length of time for which they are to be elected. These ballots shall be as near as possible in the following form:

For School Trustees:

For three (3) year term.

Vote for Three:

John Abner

William Brown

Adam Smith

For one (1) year term.

George Davis

4. *Poll and Tally List, Certificate of Judges, and Canvass of Votes.*

At every election held under this act, a poll list shall be kept by the judges and clerk at each polling place, and immediately after the close of the polls the judges shall count the ballots, and if there be more ballots than votes cast the judges must draw by lot from the ballots without seeing them, sufficient number of ballots to make the ballots remaining correspond with the number of the votes cast. The clerk shall write down in alphabetical order in a poll book provided for that purpose the name of every person voting at

the time he deposits his ballot. There shall also be provided a tally list for each polling place; after the ballots have been counted and made to agree with the poll list the judges shall proceed to count them. The clerk shall enter in the tally list the name of every person voted for as trustee, and the term, and tally opposite his name, the number of votes cast for him, and at the end thereof set down in a column provided for that purpose the whole number of votes he received. The judges and clerk shall sign a certificate to said tally list setting forth the whole number of votes cast for each person or trustee, designating the term, and they shall verify the same as being correct to the best of their knowledge before an officer authorized to administer oaths. No informality in such certificate shall vitiate the election, if the number of votes received for each person can reasonably be ascertained from said tally list. Said books and tally lists shall be returned to the board of trustees of the district, who shall canvass the vote and cause the clerk of the district to issue a certificate of election to the person or persons elected, designating their term, a copy of which must be forwarded to the county superintendent of schools. School trustees are hereby authorized to administer oaths to judges of election.

5. Term of Office: Vacancy: Oath of Trustee.

Trustees elected shall take office immediately after qualifying and shall hold office for the term of three years except as elsewhere expressly provided, and until their successors are elected and qualified, or appointed by the county superintendent of schools and qualified.

A vacancy in the office of school trustee must be filled by appointment by the county superintendent of schools subject to confirmation by a majority of the remaining members of said board, if those remaining constitute a majority of the total number of the board, which trustee so appointed shall hold office until the next annual election, at which election there shall be elected a school trustee for the unexpired term.

Every trustee shall file his oath of office with the county superintendent of schools. Any trustee who shall fail to qualify within fifteen days after being elected shall forfeit all rights to office, and the county superintendent of schools shall appoint to fill the vacancy in the office of school trustee.

6. Vacancy in School Board.

When any vacancy occurs in the office of trustee of any school district by death, resignation, failure to elect at the proper time, removal from the district, or other cause, the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the school district, and the county superintendent shall immediately appoint in writing some competent person who shall qualify and serve until the next annual school election. The county superintendent shall at the same time notify the clerk of the school district of every such appointment; provided, that absence from the school district for sixty consecutive days shall constitute a vacancy in the office of trustee.

7. Trustees—How Removed.

Any school trustee may be removed from office by a court of competent jurisdiction by law for removal of elective civil officers; provided, however, that upon charges being preferred and good cause shown, the board of county commissioners may suspend a trustee until such time as such charges can be heard in the court having jurisdiction thereof.

8. Vacancy in Office of Clerk.

Should the office of the clerk of the school district become vacant, the board of school trustees shall immediately fill such vacancy by appointment,

and the chairman of the board of school trustees, shall immediately notify the county superintendent of such appointment.

9. Rearrangement of Terms to Prevent the Election of a Majority of the Trustees.

When at any annual school election the terms of a majority of the trustees regularly expire; in districts of the first class, three trustees, in districts of the second class, two trustees, in districts of the third class, one trustee, shall be elected for three years, and the remaining trustee or trustees whose term expire shall hold over for one or two years as may be necessary to prevent the terms of a majority of the board of trustees expiring in any one year; provided, that it shall be determined by lot what trustees shall hold over, and for what term.

10. Qualifications of Electors.

Every citizen of the United States who has resided in the state of Montana for one year, and thirty days in the school district next preceding the election, may vote thereat. Women at the age twenty-one years and upward, who are citizens of the United States, and who have resided in the state of Montana one year, and in the school district for thirty days next preceding the day of the election, may vote thereat.

11. Challenges: Oath of Voters.

Any person offering to vote may be challenged by any elector of the district, and the judges must thereupon administer to the person challenged an oath or affirmation in substance as follows: "You do solemnly swear or affirm, that you are a citizen of the United States; that you are twenty-one years of age; and that you have resided in the state one year, and in this school district thirty days next preceding this election, and that you have not voted this day, so help you God." If he takes this oath or affirmation, his vote must be received; otherwise rejected. Any person who shall swear falsely before any such judge of election, shall be guilty of perjury and shall be punished accordingly.

12. Expenses of Election.

All the expenses necessarily incurred in the matter of holding elections for school trustees shall be paid out of the school funds of the district. Judges of election of districts of the first and second class shall receive not to exceed three dollars per day each for all services connected with this election. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 224.]

§ 812. Compensation of Trustees.

Every school trustee in a district of the first class, provided said district shall have a population not less than twenty thousand, shall give an official bond in the sum of ten thousand dollars for the faithful discharge of his duties, which bond shall be approved by the district judge and filed with the county clerk, and every such trustee shall be entitled to receive out of the school funds of the district the sum of four dollars for each meeting of trustees, which he shall attend in giving the necessary attention to school business, not exceeding however, one meeting each week, and he shall receive no compensation for his attendance at any meeting unless he attends throughout its entire session. The compensation here provided shall be audited and allowed by the board of trustees and entered upon their records. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 229.]

§ 813. Organization of.

The school trustees shall meet annually the third Saturday in April and organize by choosing one of their number chairman, and a competent person, not a member of the board, as clerk. The chairman shall preside at all the meetings of the board, and shall perform such duties as usually pertain to such officer, and in accordance with the customary rules of order. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 230.]

§ 814. Meetings of.

The board shall hold, in districts of the first class, at least one and not more than five meetings each month for the transaction of its business; and in all districts at least four meetings each year shall be held, to wit: On the third Saturdays of April, July, October and January, at such places and hours as shall be fixed by the board. A special meeting of the board may be held upon the call of the chairman or any two members of the board; at least forty-eight hours written notice shall be given to each member of the board of any special meetings, and no business transacted by the board shall be valid, unless transacted at a regular or special meeting thereof. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 230.]

§ 815. Quorum of.

Except when otherwise authorized by law every school district is under the control of a board of school trustees, consisting of three members, a majority of which constitutes a quorum for the transaction of business. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 230.]

§ 816. Powers.

1. *Over Property.*—The board of trustees of each school district shall have custody of all school property belonging to the district, and shall have power in the name of the district, or in their own names, as trustees of the district to convey by deed all the interest of their district in or to any school-house or lot directed to be sold as hereinafter provided, and all conveyances of real estate made to the district or to the trustees thereof, shall be made to the board of trustees of the district and to their successors in office; said board, in the name of the district shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

2. *Establish High Schools.*—Whenever the interests of the district require it a board of trustees may establish a high school, employ a principal teacher and subordinate teachers, and grade the school into departments and classes.

3. *Transportation of Pupils.*—That the trustees of any school district in the state of Montana, when they shall deem it for the best interest of all pupils residing in such district, may close their school and send pupils of the district to another district and for such purpose are hereby empowered to expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their district to such other district or districts and for the purpose of paying their tuition. Whenever the trustees of any school district in the state of Montana deem it for the best interest of such district and the pupils residing therein they made [may] expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their homes to the public school or schools maintained in such district.

4. *Night Schools.*—The trustees shall have power to organize and maintain outside of the regular school hours, special sessions of the public schools whenever in their judgment, such sessions are necessary. They shall determine what subjects shall be taught, and shall make all necessary rules and regulations for such sessions including the terms of admission of pupils. Such schools shall be free to all eligible pupils of the district and the expense of maintenance shall be paid out of the general school funds of the district.

5. *Transfer of Apportionment.*—Any board of trustees, may in their discretion, when pupils belonging in their district are attending school in another district, transfer school moneys due by apportionment to such pupils, to the district in which they are attending school.

6. *Call Special Election.*—The board of trustees shall have power to call a special election for the purpose of bonding the district for the erection and furnishing buildings and purchase of school sites, and for permission to sell school property; provided, that in districts of the first and second classes boards of trustees shall have power to change or select school sites. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 230.]

§ 817. Duties.

Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction for their own government of schools under their supervision.

2. To employ or discharge teachers, mechanics, or laborers, and to fix and order paid their wages; provided, that no teacher shall be employed except under resolution agreed to by a majority of the board of trustees at a special or regular meeting; not unless such teacher be the holder of a legal teacher's certificate in full force and effect. All contracts of employment of teachers, authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher.

3. To determine the rate of tuition of nonresident pupils.

4. To fix the compensation of the clerk.

5. To enforce the rules and regulations of the superintendent of public instruction for the government of schools, pupils, and teachers and to enforce the course of study.

6. To provide for school furniture and for everything needed in the schoolhouse or for the use of the school board.

7. To rent, repair, and insure schoolhouses.

8. To build or remove schoolhouses, and to purchase or sell school sites, provided that in districts of the third class they shall not build or remove schoolhouses, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district.

9. To hold in trust for their district all real or personal property for the benefit of the school thereof.

10. To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six years of age where the interest of the school requires such exclusion.

11. To provide books, clothing and medical aid for indigent children when it shall be made to appear that such aid is needed.

12. To require pupils to be furnished with suitable books as a condition of membership in school.

13. To exclude from school and school libraries, all books, tracts, papers and other publications of immoral and pernicious nature.

14. To require teachers to conform to the law.

15. To make an annual report, as required by law, to the county superintendent on or before the first day of October, in each year, in the manner and form and on the blanks prescribed and furnished by the superintendent of public instruction.

16. To make a report directly to the superintendent of public instruction whenever instructed by him to do so.

17. To determine what branches, if any, in addition to those required by law, shall be taught in any school in the district, subject to the approval of the county superintendent, in districts of the third class.

18. To visit every school in their district at least once in each term and to examine carefully into its management, conditions and needs. This clause applies to each of the trustees.

19. To provide separate privies or outhouses for the use of the sexes at all schoolhouses, where the same do not exist, and to see that the same are kept in good repair, and in clean condition. Such privies or outhouses must be located and built in such manner as to secure privacy. In all cases where there is no fence dividing the play-yards of the sexes, the privies or outhouses herein named shall be separate and distinct buildings, and situated at least twenty feet apart, and to require that all teachers and janitors use due care in keeping all toilets in good repair and in clean condition and free from obscenity; provided, that any trustee or trustees, teacher, janitor or janitors, failing to comply with the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars or imprisoned in the county jail not exceeding ninety days or both such fine and imprisonment in the discretion of the court.

20. To allow pupils residing in other districts to attend school in the district of which they have charge if in their judgment there is sufficient room.

21. To procure by purchase or donation and to cause to be displayed daily in suitable weather, an American flag, with accompanying necessary fixtures, for each and every schoolhouse in their respective districts. Said flag shall be of dimensions not less than four by six feet and shall be made from durable material. The school trustees are hereby authorized and empowered to use such portion of the school funds as remain in their hands and which is not otherwise appropriated for the purchase and erection of fixtures.

22. To close school at their discretion during the annual session of the State Teachers' Association, and to allow teachers to attend the same without loss of salary. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 232.]

§ 818. Letting Contracts and Furnishing Supplies, Trustees not to be Interested in.

It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in the erection of any schoolhouses, or for warming, ventilating, furnishing or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools,

or to receive or to accept any compensation or reward for services rendered as trustees, except as hereinbefore provided. No board of trustees shall let any contract for building, furnishing, repairing, or other work, for the benefit of the district, where the amount involved is two hundred and fifty dollars, or more, without first advertising in a newspaper published in the county for at least two weeks, calling for bids to perform such work, and the board shall award the contract to the lowest responsible bidder; provided, however, that the board of school trustees shall have the right to reject any and all bids. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 234.]

§ 819. Liability.

Any board of trustees, shall be liable as trustees, in the name of the district, for any judgment against the district, for any salary due any teacher on contract and for all debts legally contracted under the provisions of this title, and they shall pay such judgments, or liabilities out of the school moneys to the credit of such district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 234.]

§ 820. Misdemeanor—Penalty.

When any school officer is suspended by election or otherwise, he shall immediately deliver to his successor in office all books, papers, and moneys pertaining to his office, and such officer who shall refuse to do so, or who shall willfully mutilate or destroy any such books or papers, or any part thereof, or who shall misapply any moneys intrusted to him by virtue of his office, shall be guilty of a misdemeanor, and shall be punished by a fine in the discretion of the court, not exceeding one hundred dollars. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 234.]

§ 821. Clerk.

The duties of the district clerk shall be as follows:

1. To attend all meetings of the board of trustees; but if he shall not be present, the board of trustees shall select one of their number as clerk who shall certify the proceedings of the meeting to the clerk of the district to be recorded by him. He shall keep his record in a book to be furnished by the board of trustees and he shall preserve a copy of all reports made to the county superintendent and safely preserve and keep all books and documents belonging to his office, and shall turn the same over to his successors.

2. To keep accurate and detailed accounts of all receipts and expenditures of school moneys. At each annual school meeting the district clerk shall present his record book, for public inspection and shall make a statement of the financial condition of the district and the action of the trustees and such record must always be open for public inspection.

3. To make annually between the first day of September and the first day of October of each year, an exact census of all the children and youth between the age of six and twenty-one years residing in the district; and shall specify the sex, age, and date of birth of such children. He shall take the name of each child, the same to be spelled out in full; the Christian and surname of both parents, or guardians, and including initials of all middle names, together with the place of residence of said parents or guardians, specified by street and number if living in city or town; or, if living in

any other than a city or town, the postoffice address of said parents or guardians must be given. He shall take specifically and separately a census of all children under the age of six years as in the manner aforesaid, all children under twenty-one years of age who may be absent from home for any cause, shall be included by the district clerk in his census list of the city, town or district in which their parents reside. He shall make under oath full report thereof on blanks furnished for this purpose to the county superintendent in duplicate, within fifteen days after the completion of the census and deliver a copy to the school trustees. Failure to make such report as specified shall constitute a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than fifty dollars. For taking the census the district clerk shall be paid by the board of trustees from the county school money, to the credit of the district, in the same manner as other contingent expenses are paid, at a rate not exceeding ten cents for each child's name returned by him. He shall receive such other compensation for other services as may be allowed by the board of trustees. In case any district clerk shall fail to take the census provided in this act at a proper time, and if through such neglect the district fail to receive its apportionment of school moneys, said school clerk shall be individually liable to the district for the full amount so lost, and it may be recovered on a suit brought by any citizen of such district in the name and for the benefit of the district.

4. To make annually between the first and twentieth days of September of each year, an extra detailed and itemized statement, of all moneys expended by or in behalf of the school district, which statement shall show all disbursements made on behalf of the school district from September first of the preceding year to September first of the current year; it is hereby made the duty of the clerk to file said statement on or before September thirtieth of each year with the chairman of the board of trustees of the district and a copy thereof with the county treasurer of the county wherein the district is located and in all districts disbursing annually amounts exceeding ten thousand dollars, the clerk shall and in districts disbursing less than ten thousand dollars, annually, may cause to be published in some newspaper in general circulation published in the same county, a copy of said statement, for two consecutive issues, such publication to commence not later than the first week in September. It is hereby made the duty of the board of county commissioners of each county to designate the newspaper in which said publication shall be made. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 235.]

§ 822. Shall not Purchase Charts.

The board of school trustees in any district of the third class shall not issue any warrant for maps, charts or other apparatus unless the same is authorized by the county superintendent. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 235.]

CHAPTER VI.

SCHOOLS.

§ 823. School Defined.

A public school is hereby defined to be one that is maintained at the public expense in each school district, and under the supervision of the board of trustees, and shall comprise the elementary grades and may comprise in addition at option of the board the kindergarten and high school grades. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 237.]

Editorial Notes.

Meaning of word "school." Ann. Cas. 1912B, 1353.

§ 824. Course of Study in Elementary Schools.

All public schools shall be taught in the English language; and instruction shall be given in the following branches, viz.: Reading, penmanship, written arithmetic, mental arithmetic, orthography, geography, English grammar, physiology and hygiene, with special reference to the effect of alcoholic stimulants and narcotics on the human system, civics (state and federal), United States history, and history of Montana. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 237.]

§ 825. Kindergarten Free.

The school board of any school district in the state shall have power to establish and maintain free kindergartens in connection with the public schools of said district, for the instruction of children between three and six years, residing in said district and shall establish such course of training, study and discipline, and such rules and regulations governing such preparatory or kindergarten schools as said board may deem best; provided, that nothing in this act shall be construed to change the law relating to the taking of the census of the school population or the apportionment of state and county school funds among the several counties and districts in the state; provided, further, that the cost of establishing and maintaining such kindergartens shall be paid from the school funds of said district, and the said kindergartens shall be a part of the public school system and governed as far as practicable in the manner and by the same officers as is now, or hereafter may be provided by law for the government of the other public schools of the state; provided, further, that the teachers of kindergarten schools shall pass such examination on kindergarten work as the kindergarten department of the state normal school may direct, provided that a certificate from a kindergarten teacher's institute of recognized standing shall be recognized by the state normal school. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 237.]

§ 826. High Schools.

Boards of trustees have power to establish a high school as hereinbefore provided. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 238.]

§ 827. Who may Attend.

Every public school not otherwise provided for by law shall be open to the admission of all children between the ages of six and twenty-one years residing in the school district, and the board of trustees shall have the power to admit children not residing in the district as hereinbefore provided. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 238.]

§ 828. School Day.

The school day shall be six hours in length, exclusive of an intermission at noon; but any board of trustees in any district having a population of five hundred or more may fix as the school day a less number of hours than six; provided, that it be not less than four hours, except in the lowest primary grades where the pupils may be dismissed after an attendance of three hours. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 238.]

§ 829. School Month.

A school month shall consist of four weeks of five days each. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 238.]

§ 830. School Year.

The school year shall begin on the first day of September, and end on the thirty-first day of August; provided, that in districts of the third class the schools shall not be in session less than four months in any school year, and in districts of the first and second classes the school shall be in session not less than nine months during any school year; provided, further that any school district of the third class which shall fail to maintain a free school for four months during the next preceding school year, and any district of the first and second class which shall fail to maintain a free school for at least nine months during the next preceding school year, or any school district that shall fail to make its annual report to the county superintendent as provided by law on or before October 1st, of each year shall not be entitled to receive any apportionment of any school moneys.

Any and all such moneys thus forfeited by any school district shall be apportioned by the county superintendent to other school districts of his county. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 238.]

§ 831. Maintenance of Schools in Isolated Sections.

In districts in which there may be an isolated section or sections where reside not less than four children, which sections are situated not less than five miles from the established high school in such district, in which isolated section or sections is maintained for not less than three months a school presided over by a regular qualified teacher for the benefit of all children of such section, the board of trustees of such district may pay to the teacher of such school the apportionment of the school moneys for the census children so attending said school. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 238.]

§ 832. Sectarian Publications Prohibited.

No publication of a sectarian, partisan or denominational character shall be used or distributed in any school or be made a part of any school library; nor shall any sectarian or denominational doctrines be taught therein. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 239.]

§ 833. Fire Drills.

1. That in all schools of the state, either public or private, in which thirty or more children are enrolled, it shall be the duty of the teacher or teachers therein employed to instruct the children under their immediate control and charge once each week during school terms in "fire drill" as hereinafter provided.

2. A fire-alarm shall be given by striking a gong, and immediately upon such alarm, the children shall be required to form immediately in line and leave the building in orderly manner, through the exit and exits that will most expeditiously clear the building. There shall be no certain day of the week or hour of the day for giving such alarm, and it shall be given without previous warning to the children.

3. It shall be the duty of the trustees or directors, or other persons having control and management of any school building of the class mentioned in subdivision one of this section, to provide one or more gongs therefor, to be placed in such a manner that any teacher may give an alarm without leaving the room or that such alarm could be given from the basement. Each member of any board of trustees or directors, or any other person, whose duty it is to install said gongs as herein provided, who fails or refuses so to do shall be guilty of a misdemeanor and upon conviction shall be fined not less than five nor more than fifty dollars.

4. Any teacher who fails or refuses to instruct in said fire drill in the manner provided for in this chapter, after the installation of gongs, as above provided, shall be deemed guilty of a misdemeanor and shall upon conviction, be fined not less than five nor more than twenty-five dollars. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 239.]

§ 834. Instruction in Fire Dangers and Prevention Thereof.

1. Every teacher or instructor in every public, private or parochial school of elementary grade consisting of more than ten pupils, shall devote not less than ten minutes in each week during which school is in session to the instruction of pupils in fire dangers.

For the purpose of such instruction it shall be the duty of the commissioner of insurance, to prepare a book conveniently arranged in chapters or lessons, such chapters or lessons to be in number sufficient to provide a different chapter or lesson for each week of the maximum school year, one of such lessons to be read by the teachers in such school each week; provided, that if it is advisable, and found possible, to secure such lessons as may have been prepared for this purpose, or in use, in another state, the same may be used in this state.

This book shall be published at the expense of the state from the amount appropriated for public printing, under the direction of the state superintendent of public instruction, and shall be distributed in quantities sufficient to provide a copy for each teacher required by the provisions of this chapter, to give the instruction herein provided for; the distribution to be made by the state superintendent of public instruction.

2. Willful neglect by any principal, or other person, in charge of any public, private or parochial school of the elementary grades to comply with the provisions of this chapter, shall be a misdemeanor, punishable, each offense, by a fine of not less than five dollars nor more than twenty dollars. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 240.]

§ 835. Prevention of Communicable Diseases.

1. There shall be taught in every year in every public school of elementary grade in Montana, the principal modes by which each of the dangerous communicable diseases spread, and the method for the restriction and prevention of each such diseases as smallpox, diphtheria, scarlet fever, measles, tuberculosis, chicken-pox, and such other diseases as may be named, and attention called to the same by the board of health of this state.

2. School boards shall annually send to the public school superintendents and teachers throughout the state printed data and statements which will enable them to comply with the provisions of his chapter.

3. School boards are hereby required to direct superintendents and teachers to give oral and blackboard instruction, using the data and statements supplied by the state board of health.

4. Neglect or refusal on the part of any superintendent or teacher to comply with the provisions of this chapter shall be considered a sufficient cause for dismissal from the school by the school board.

5. Any member of any school board who shall willfully neglect or refuse to comply with any provisions of this chapter shall be deemed guilty of a misdemeanor and shall be subject to punishment by a fine not exceeding one hundred dollars. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 240.]

CHAPTER VII.

PUPILS.

§ 836. Discipline.

All pupils who may be attending public schools shall comply with the regulations established in pursuance of law for the government of such schools; shall pursue the required course of study, and shall submit to the authority of the teachers of such schools. Continued and willful disobedience and open defiance of the authority of the teacher shall constitute good cause for expulsion from school. Any pupil who (who) shall in any way, cut, deface or otherwise injure any schoolhouse, furniture, fences or out-buildings thereof, or any book belonging to other pupils, or any books belonging to the district library, shall be liable to suspension and punishment, and the parent or guardian of such pupil shall be liable for damages, on complaint of the teacher or any trustee and upon proof of the same. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 241.]

§ 837. Secret Fraternities.

1. *Prohibited in Public Schools.*—From and after the passage of this act it shall be unlawful for any pupil, registered as such, and attending any public high school, district, primary or graded school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join, or become a member of any secret fraternity or society wholly or partially formed from the membership of pupils attending any such schools or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the trustees of such schools.

2. *Trustees to Establish Rules and Regulations.*—The trustees of all such schools shall enforce the provisions of section 701 [§ 837 herein] of this chapter and shall have full power and authority to make, adopt and modify all rules and regulations which in their judgment and discretion may be necessary for the proper governing of such schools and enforcing all the provisions of this section.

3. *Trustees Shall Have Power to Suspend or Dismiss.*—The trustees of such schools shall have full power and authority, pursuant to the adoption of such rules and regulations made and adopted by them, to suspend or dismiss any pupil or pupils of such school therefrom, or to prevent them, or

any of them, from graduating or participating in school honors when, after investigation, in the judgment of such trustees, or a majority of them, such pupil or pupils are guilty of violating any of the provisions of this section, or who are guilty of violating any rule, rules or regulations adopted by such trustees for the purpose of governing such schools or enforcing this section.

4. *Soliciting a Misdemeanor, by Persons not Pupils.*—It is hereby made a misdemeanor for any person not a pupil of such schools to be upon the school grounds, or to enter any school building for the purpose of “rushing” or soliciting while there any pupil or pupils of such schools to join any fraternity, society or association organized outside of said schools.

All persons convicted of violating the provisions of this section shall be punished by a fine of not less than five dollars nor more than twenty-five dollars. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 241.]

CHAPTER VIII.

TEACHERS.

§ 838. Certificate of Qualification.

1. *Qualifications.*—No certificate to teach in the public schools of Montana shall be granted to any person, who is not a citizen of the United States, or who has not declared his intention to become a citizen.

2. No person is eligible to teach in any public school in this state, or to receive a certificate to teach, who has not attained the age of eighteen years.

3. No person shall be accounted a qualified teacher within the meaning of the school law who has not first secured from the county board of educational examiners of the county in which he proposes to teach, a certificate setting forth his qualifications; or who has not secured a temporary certificate from the county superintendent, or from the county board of educational examiners; or who has not a certificate indorsed by the county board of educational examiners; or who has not a state certificate or a life diploma issued by the state board of education; or who has not a temporary state certificate issued by the state superintendent; or who does not hold a certificate from the state normal college; or who has not a university certificate of qualification to teach. Upon the request of any board of school district trustees or its representatives, or any county superintendent of schools, the state superintendent of public instruction may grant, without examination, a special certificate valid only in the district requesting the same, in music, drawing, elocution, physical culture, penmanship, manual training, domestic science, agriculture, commercial and kindred subjects, first three year primary, and kindergarten grades to any teacher who presents satisfactory evidence of special proficiency for teaching any of the above subjects, as shown by any certificate and credentials held by such teacher; provided, that such special certificate shall be valid for only one year, and shall be referred to the state board of education for further approval on the payment of one dollar (\$1) into the county institute fund, and shall entitle the holder to teach only such special subjects as are stated in said certificate, provided, that all certificates or diplomas before they shall be valid in any county must be registered in the office of the county superintendent within ten days after the term of service of any teacher begins; and not more

than ten days' salary shall be paid any teacher for services rendered previous to the registration of such certificate or diploma.

4. Any person to be eligible to teach in any public school in Montana must have attained the age of eighteen years, must be a citizen of the United States, or must have declared his intention to become a citizen, and must be the holder of a lawful certificate to teach. Any contract made in violation of this section shall be void. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 242.]

§ 839. Tenure of Office of Teachers.

After election of any teacher or principal for the second consecutive year in any district in the state such teacher or principal so elected shall be, deemed re-elected from year to year thereafter unless the board of trustees shall by a majority vote of its members on or before the first day of May give notice in writing to such teacher or principal that his services will not be required for the ensuing year; provided, that in case of principals in charge of school systems such notice shall be given on or before February 1st. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 244.]

§ 840. Powers.

Every teacher shall have power to hold every pupil to a strict accountability in school, for any disorderly conduct on the way to and from school or during intermission or recess; to suspend from school any pupil for good cause; provided that suspension shall be reported to the trustees as soon as practicable for their decision; provided, further, that in school districts employing a superintendent or principal, the power of suspension shall be vested in the superintendent or principal as directed by the rules of the board. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 244.]

§ 841. Duties.

1. Teachers shall faithfully enforce in school the course of study and regulations prescribed, and if the teacher shall refuse or neglect to comply with such regulations then the board of trustees shall be authorized to withhold any warrant for salaries due, until such teacher shall comply therewith.

2. It shall be the duty of the teacher of every public school in this state to keep in a neat and businesslike manner, a daily register in such form and upon such blanks as shall be prepared by the superintendent of public instruction, and no board of trustees shall draw any warrant for the salary of any teacher for the last month of his services in the school at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and the statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done.

3. Every teacher employed in any public school shall make an annual report to the county superintendent on or before the tenth day of September next after the close of each school year, in the form and manner and on blanks prescribed by the superintendent of public instruction. A copy of such report shall be furnished to the district clerk.

Any teacher who shall end any school term before the close of the school year, shall make a report to the county superintendent immediately after the close of such term, and any teacher who may be teaching any school at the close of the school year shall in his annual report, include all

statistics from the school register for the entire school year notwithstanding any previous report for a part of the year. Teachers shall make such additional reports as shall be required in pursuance of law by the superintendent of public instruction. No board of trustees shall draw any order or warrant for the salary of any teacher, for the last month of his services until the reports herein required shall have been made and received; provided, that in all schools acting under the direction of a city superintendent, teachers shall be required to report to such superintendent, whose report shall be accepted by the county superintendent and by the trustees in lieu of the teachers' reports; and that when there is no city superintendent, the report of the principal shall be accepted in lieu of the teachers' reports.

4. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice and patriotism; to teach them to avoid idleness, profanity and falsehood, and to instruct them in the principles of free government and to train them up to a true comprehension of the rights, duties and dignity of American citizenship.

5. It shall be the duty of the teacher to exercise due diligence in the care of school grounds and buildings, furniture, apparatus, books and supplies.

6. Whenever it shall be deemed necessary to inflict corporal punishment on any student in the public schools, such punishment shall be inflicted without undue anger and only in the presence of teacher and principal, if there be one; and then only after notice to the parent or guardian; except that in cases of open and flagrant defiance of the teacher or the authority of the school, corporal punishment may be inflicted by the teacher or principal without such notice.

7. Any parent, guardian, or other person, who shall insult or abuse a teacher in the presence of the school, or anywhere on the school grounds or school premises, shall be deemed guilty of a misdemeanor and shall be liable to a fine of not less than ten dollars nor more than one hundred dollars.

8. Any person who shall willfully disturb any public school or any public school meeting, shall be deemed guilty of a misdemeanor and shall be liable to a fine of not less than ten dollars nor more than one hundred dollars. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 244.]

§ 842. Undue Punishment of Pupils.

Any teacher who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 246.]

§ 843. Dismissal—Appeal.

In the case of the dismissal of any teacher before the expiration of any written contract entered into between such teacher and board of trustees for alleged immorality, unfitness, incompetence or violation of rules, the teacher may appeal to the county superintendent; and if the superintendent decides that the removal was made without good cause, the teacher so removed must be reinstated, and shall be entitled to compensation for the time lost during the pending of the appeal. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 246.]

§ 844. Suspension of Teachers' Certificates.

Should any teacher employed by the board of school trustees for a specified time, leave the school before the expiration of such time, without the consent of the trustees in writing, said teacher shall be guilty of unprofessional conduct, and the county superintendent may, upon receiving notice of such fact, suspend the certificate of such teacher for the period of six months. Should such teacher be the holder of a state certificate or life diploma the county superintendent shall report the delinquency of the teacher to the superintendent of public instruction, who may suspend said diploma for the period of one year. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 246.]

§ 845. School Month—Legal Holidays.

In every contract between any teacher and board of trustees, a school month shall be construed as twenty school days, or four weeks of five days each, and no teacher shall be required to teach school on a legal holiday, and no deduction from the teacher's time or wages shall be made by reason of the fact that a school day happens to be a legal holiday. Any contract made in violation of this section shall have no force or effect as against the teacher. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 246.]

CHAPTER IX.**COUNTY EXAMINATIONS AND CERTIFICATES.****§ 846. Examination of Teachers.**

The county board of educational examiners shall hold public examinations of all persons over eighteen years of age offering themselves as candidates for teachers of public schools, at the county seat, on the last Thursday and Friday of February, April, August and October of each year, and when necessary, such examinations may be continued on the following day, at which time the board shall examine such candidates by a series of written or printed questions, according to rules prescribed by the state superintendent of public instruction. The questions prepared by the state superintendent of public instruction when received by the county superintendent shall not be opened or the seal thereof broken until the day of examination and then in the presence of the applicants. And the county superintendent is prohibited from furnishing or giving to any person or persons any information concerning the questions prepared by the state superintendent. If the percentage of correct answers is not less than seventy per cent in any one branch with a general average of eighty per cent, and other evidence disclosed by the examination including particularly the board's knowledge and information of the candidate's scholarship and successful experience, indicates that the applicant is a person of good moral character and possesses ability to manage, and fitness to teach in the public schools of the state the various branches required by law, said board shall grant to such applicant a certificate of qualification, provided that no certificate shall be granted to any person who is not a citizen of the United States or who has not declared his intention to become a citizen.

If the attendance upon any examination of teachers at the county seat shall work a great hardship to any teacher in the county, the county superintendent, upon the approval of the state superintendent, may provide for

such teachers to take the examination at some convenient place, and the county superintendent may appoint some suitable person to conduct such examination under the rules and regulations prescribed by the state superintendent of public instruction. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 247.]

§ 847. County Board of Educational Examiners.

In each county there shall be a board of county examiners composed of the county superintendent of schools who shall be ex-officio chairman of the board, and two competent persons to be appointed by the board of county commissioners, who at the time of their appointment shall be residents of the county and shall have been actively engaged in teaching for a period of at least eighteen months. Two members of this board shall constitute a quorum for the transaction of business. If vacancies occur in these positions during the terms for which their incumbents were appointed, their successors shall be appointed to serve during their unexpired terms only. Upon the expiration of the regular terms of either of these examiners his successor shall be appointed to serve for two years. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 248.]

§ 848. Qualification of County Board of Educational Examiners.

Such examiners at the time of their appointment must be holders of Montana professional county certificates, or state certificates, or life diplomas, or diplomas from the state university, state normal college, or state college of agriculture and mechanic arts, or holders of diplomas as graduates from some reputable university, college or normal school other than those of Montana. These examiners shall qualify for their positions in the same form and manner required for the qualification of all county superintendents. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 248.]

§ 849. Duties of County Board of Educational Examiners.

The duties of these two examiners shall be to act jointly and equally with the county superintendent in the matter of conducting the examination of teachers and in the marking and grading of papers submitted to them as the results of the examination. This board of examiners shall also conduct all eighth grade examinations in their respective counties when requested to do so by the state board of education under their rules and regulations; and it shall be empowered to grant eighth grade diplomas or common school certificates to all examinees successfully passing such examination. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 248.]

§ 850. Compensation of Board of Examiners.

The compensation of these examiners shall be their actual traveling expenses from their residences to and from the county seat or other point in the county where the examinations are held, and such further compensation per diem as the board of county commissioners may deem just and sufficient for their services, basing such compensation upon the actual quantity of work performed by them and the actual time required to perform it. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 248.]

§ 851. Certificates—Kinds.

(a) *Second Grade.*—To secure a second grade certificate, no experience is required. Applicants for this grade must present evidence of good moral

character and physical health and shall pass an examination in the following branches, or such additional branches as may hereafter be prescribed by the state board of education: Reading, writing, arithmetic, spelling, grammar, geography, physiology and hygiene, United States history, civics, (state and federal), and theory and practice of teaching. This certificate shall be valid for a period of eighteen months, and on being indorsed and registered in the office of the county superintendent, shall be valid in any county in the state.

(b) *First Grade*.—To secure a first grade certificate, the applicant must present evidence of good moral character and physical health, must have had twelve months' successful experience as a teacher, and must in addition to the branches required for a second grade certificate, take an examination in American literature, physical geography, elementary algebra through quadratics, and school management and such other branches as may be prescribed by the state board of education. This certificate shall be issued for a period of three years and shall be valid in any county on being indorsed and registered in the office of the county superintendent.

(c) *Professional*.—To secure a professional certificate the applicant must present evidence of good moral character and physical health, must have had at least eighteen months' successful experience as a teacher, and in addition to the branches required for a first grade certificate, must pass an examination in physics, plane geometry and elementary psychology. This certificate shall be issued for a period of four years and shall be valid in any county on being indorsed and registered in the office of the county superintendent of schools.

(d) *Temporary Certificate*.—The county superintendent may grant a temporary certificate to teach until next regular examination to any person applying at any other time than at a regular examination, and who has previously held a valid certificate to teach, but such temporary certificate shall not be granted more than once to the same person; provided, that when it is impossible because of sickness or other valid reasons for such teacher to attend the next regular examination, such teacher shall certify the facts to the county board of educational examiners, and this board may issue a second permit valid until the next regular examination, provided, further, that when a teacher shows special fitness to teach and passes at the examination seventy per cent or above in all subjects, but fails to make an average of eighty per cent, or secures an average of eighty per cent for all branches, but fails to make seventy per cent in one or two branches, such teacher may, at the discretion of the county board of educational examiners, be issued a permit to teach until the next regular examination; and at such examination no teacher shall be required to be examined in any branch in which she has obtained a grade of eighty per cent. Such a permit shall not be issued to any teacher more than once.

(e) *Special Certificates*.—Upon the request of any board of school district trustees, or its representatives or any county superintendent of schools, a special certificate valid only in the district requesting the same, may be granted by the state superintendent of public instruction, in music, drawing, elocution, physical culture, penmanship, manual training, domestic science, agriculture, commercial and kindred subjects, first three primary and kindergarten grades to any teacher who presents satisfactory evidence of special proficiency for teaching any of the above subjects, as shown by any certificate

and credentials held by such teacher, on the payment of one (\$1) dollar into the county institute fund; provided, that such special certificate shall be valid only for one year and shall entitle the holder to teach only such special subjects as are stated in said certificates; provided, that all certificates or diplomas before they shall be valid in any county must be registered in the office of the county superintendent within ten days after the term of service of any teacher begins; and not more than ten days' salary shall be paid any teacher for services rendered previous to the registration of such certificate or diploma and provided that such special certificate shall be referred to the state board of education for further approval.

(f) *Fees for Certificates.*—Every applicant for a county certificate shall pay one dollar to the county superintendent, which shall be used by him in the support of teachers' institutes in the county.

(g) *Recanvass of Papers on Appeal.*—Any candidate thinking an injustice has been done, by paying a fee of two dollars into the institute fund of the county and by notifying both county and state superintendent of the same, shall have his papers re-examined by the state superintendent of public instruction. The county superintendent shall upon receipt of such notice from said complaining candidate, transfer said papers to the state superintendent of public instruction, who shall re-examine the same and if the answers warrant it, shall instruct the county board of educational examiners to issue to such complaining candidate a county certificate of proper grade, and the county superintendent shall carry out such instruction and return the appeal fee of two dollars to the teacher.

(h) *Revocation of Certificates.*—The county superintendent is authorized and required to revoke and annul, at any time, any county certificate granted by any board of educational examiners for any cause which would have authorized or required the board to refuse to grant it if known at the time it was granted, and for incompetency, immorality, intemperance, physical inability, crime against the state law, refusal to perform his duty or general neglect of the business of the school. The revocation of the certificate shall terminate the employment of such teacher in the school in which he may at the time be employed, but the teacher must be paid up to the time of receiving notice of such revocation. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 249.]

§ 851a. Renewals.

Before the expiration of any professional or first grade certificate, such certificate shall be renewed by the county board of educational examiners, upon the proper fee being paid into the institute fund, as provided for in the case of examination; provided, that no professional or first grade certificate shall be renewed unless the applicant has taught successfully, as shown by two or more testimonials, at least twelve months during the life of such certificate. Said professional or first grade certificate shall be renewed by any county board of educational examiners by indorsement thereon. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 251.]

§ 851b. Higher Grade Certificate—How Secured.

Whenever application is made by a holder of an unexpired first grade or second grade county certificate for examination for any higher grade county certificate, and it shall be made to appear to any board of educational examiners that such applicant has been engaged in teaching successfully, as

shown by two or more testimonials, in any of the public schools of the state for a period of twelve months or more, the said applicant shall be entitled to be credited on such higher certificate in all subjects in which he has received eighty per cent or above, as shown on the said unexpired certificate, and shall not be required to be examined in any studies except the additional ones prescribed for such certificates and such other studies in which he may not have secured eighty per cent on his unexpired certificate. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 252.]

§ 851c. Normal School Credits Acknowledged.

Any applicant for any grade of county certificate who has completed at the Montana State Normal College any branch for such certificate, shall upon filing with the county board of educational examiners a statement from the president of said Normal College to that effect, have such grade credited without examination on such certificate. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 252.]

§ 851d. Existing Certificates Validated.

Any person now holding a professional grade certificate, a first grade certificate, a second grade certificate, or a third grade certificate shall be permitted to teach thereunder during the life of such certificate; and any person now holding a professional or first grade certificate may have the same renewed by the county superintendent upon the proper fee being paid into the institute fund as provided for in the case of examination, provided, that there shall be no limit to the possible number of such renewals. No such certificate shall be renewed unless the applicant has taught at least ten months during the life of such certificate. Whenever application is made by any person now holding an unexpired first grade, second grade, or third grade Montana certificate for examination for any higher grade certificate provided for in this act, and it shall be made to appear to the county superintendent that such applicant has been engaged in teaching in any of the public schools of the state for a period of one year or more, said applicant shall be entitled to be credited with the percentage on his last examination for said first, second, or third grade certificate, as the case may be, and shall not be required to be examined in any studies except the additional ones prescribed for such certificate and such other studies as the applicant may not have secured the required percentage in previous examinations; provided, that to excuse any person not holding a certificate from taking the examination upon any branch of any grade, he or she must have secured upon such branch, at his or her last previous examination at least eighty per cent. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 252.]

§ 852. Principals' and High School Teachers' Certificates.

No person shall be employed as a teacher in a high school or as the principal teacher of a school of more than three departments who is not a holder of a professional county certificate or a Montana state or life certificate, or who is not a graduate of some reputable university, college, or normal school recognized by the state board of education. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 253.]

CHAPTER X.

TEACHERS' INSTITUTES AND SUMMER SCHOOLS.

§ 853. Teachers' Institutes to be Held Yearly.

The county superintendent in every county must hold one teachers' institute in each year, at the county seat, except as hereinafter provided, and every teacher employed in a public school in the county must attend the institute and participate in its proceedings except as hereinafter provided; provided, that whenever the state superintendent and two or more county superintendents deem it advisable, a joint institute consisting of the teachers of two or more counties, may be held at any convenient place within such counties to be selected and agreed upon by their superintendents. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 253.]

§ 854. Length of Session.

Each session of the institute must continue not less than four nor more than ten days. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 253.]

§ 855. Institute Instructors.

The instructors for the county institutes and summer schools shall be selected by the county superintendent from a list recommended upon the approval of the state board of education by the state superintendent. No instructor shall receive any compensation unless he is the holder of an institute instructor's license issued by the state board of education. [Amendment approved March 12, 1913; Laws, 1913, c. 76, p. 253.]

§ 856. Teachers must Attend.

The county superintendent shall confer with the state superintendent, and on his approval, appoint a time for holding the teachers' institute in his county. It shall be his duty to give written notice of the time and place in his county, and to all the teachers of the county, at least thirty days before the opening of such institute. It shall be the duty of all boards of school trustees, through their clerks, to notify each and all of the teachers within their districts of the time and place of holding the institute and to direct each and all of their teachers to close their several schools for the purpose of attending the institute. Each and every teacher engaged in teaching a term of school in any district during the time of the institute shall close his school during such time and shall attend the institute and take active part in the same except as hereinafter provided, without loss of salary for the actual time spent in attending the institute and for the actual time spent in going to and returning from the same. The county superintendent shall in all cases keep and preserve a record of the actual time spent by each teacher of his county at the institute and shall furnish both to each teacher and to his board of school trustees a certificate of the time spent by said teachers at the institute. Willful failure on the part of any teacher to attend the institute, except as hereinafter provided, shall be considered sufficient cause for the revocation of such teacher's certificate by the county superintendent; provided, however, that the county superintendent may, in his discretion, excuse any teacher from attending the institute who could not attend same without great and excessive, inconvenience, cost, expense, and loss of time. Willful failure on the part of the board of school trustees of any

school district to close their schools; during the time of the holding of the institute as herein required, shall be considered sufficient cause for withholding the public moneys to which such district would otherwise be entitled; provided, however, that, in the case of boards of school trustees as in the case of teachers the great distance of any school district from the place of holding the institute, excessive loss of time, inconvenience, and cost shall be considered good grounds on which the county superintendent, under authority and direction from the state superintendent, may excuse any board of school trustees from closing their schools at such times and from observing the above requirements. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 254.]

§ 857. High School Teachers Exempt.

All high school teachers are hereby exempt from the requirements of this chapter. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 255.]

§ 858. Institute and Summer School Fund.

For the purpose of defraying the expenses of the institute there shall be a fund created as follows:

1. All moneys received from the issuance of teachers' certificates by the county superintendent.

2. Moneys received from appropriations by boards of county commissioners; and every board of county commissioners in each county in which a teachers' institute or summer school may be held is hereby authorized and directed to appropriate for said fund as follows:

Counties of the first class not less than \$250 nor more than \$450. Counties of the second class not less than \$250 nor more than \$400. Counties of the third, fourth, fifth and sixth classes not less than \$200 nor more than \$350. Counties of the seventh and eighth classes, not less than \$150 nor more than \$300. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 255.]

§ 859. Summer Schools.

1. In any county or counties of the state the county superintendent or superintendents by mutual agreement of such superintendents, acting with the advice and consent of the state superintendent, may hold a summer school for teachers not less than three weeks in length for such county or counties in lieu of an institute or institutes for such year and the board of county commissioners of each county shall appropriate for such summer school support in like sum as is hereinbefore provided for in the case of teachers' institutes.

2. It shall be the duty of the state superintendent to prepare and prescribe a course of study for use in such summer schools.

3. Students of summer schools may have such work as is satisfactorily done credited on their certificates. Any teacher presenting a certificate of attendance on any summer school within or without the state approved by the county superintendent may be excused from institute attendance within the county where he may be teaching. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 255.]

§ 860. Expenses of Institutes and Summer Schools.

The county superintendent must keep an accurate account of the actual expenses of summer schools or institutes, with vouchers for the same, and

present the bill to the county commissioners, who shall allow the same; provided, that such amount shall not exceed the sum specified as hereinbefore provided. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 256.]

CHAPTER XI.

COMPULSORY ATTENDANCE.

§ 861. Compulsory Attendance—Excuses.

All parents, guardians, and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, language, English grammar, geography, history and civics, physiology and hygiene and arithmetic. Every parent, guardian or other person having charge of any child between the ages of eight and fourteen years shall send such child to a public, private or parochial school, for the full time that the school attended is in session, which shall in no case be for less than sixteen weeks during any current year, and said attendance shall begin within the first week of the school term, unless the child is excused from such attendance by the superintendent of the public schools, in city and other districts having such superintendent, or by the clerk of the board of trustees in districts not having such superintendent, or by the principal of the private, or parochial school, upon satisfactory showing, either that the bodily or mental condition of the child does not permit of its attendance at school, or that the child is being instructed at home by a person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, or the clerk of the board of trustees in districts not having such superintendent, to teach the branches named in this section; provided, that the county superintendent may excuse children from attendance upon such schools where in his judgment the distance makes such attendance an undue hardship. In case the county superintendent, city superintendent, principal or clerk refuses to excuse a child from attendance at school, an appeal may be taken from such decision to the district court of the county, upon giving a bond, within ten days after such refusal, to the approval of said court, to pay all costs of the appeal, and the decision of the district court in the matter shall be final. All children between the ages of fourteen and sixteen years, not engaged in some regular employment, shall attend school for the full term during which the school of the district in which they reside are in session during the school year, unless excused for the reason above named. Any parent, guardian or other person having the care of or custody of a child between the ages of eight and fourteen years, who shall fail to comply with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five dollars nor more than twenty dollars. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 256.]

Editorial Notes.

Compulsory attendance at public schools. Ann. Cas. 1912A, 373.

§ 862. Employment of Children Under Fourteen Prohibited.

No child under fourteen years of age shall be employed or be in the employment of any person, company or corporation during the school term and while the public schools are in session, unless such child shall present

to such person, company or corporation an age and schooling certificate herein provided for. An age and schooling certificate shall be approved by the superintendent of schools or by a person authorized by him, in city or other districts, having such superintendent, or by the clerk of the board of trustees in districts not having such superintendent, upon a satisfactory proof of the age of such minor and that he has successfully completed the studies enumerated in section 1100 [§ 861 herein] of this chapter; or if between the ages of fourteen and sixteen years, a knowledge of his or her ability to read intelligently and write legibly the English language. The age and schooling certificate shall be formulated by the superintendent of public instruction and the same furnished, in blank, by the clerk of the board of trustees. Every person, company, or corporation employing any child under sixteen years of age, shall exact the age and schooling certificate prescribed in this section, as a condition of employment and shall keep the same on file, and shall upon the request of the truant officer hereinafter provided for, permit him to examine such age and schooling certificate. Any person, company or corporation, employing any minor contrary to the provisions of this chapter shall be fined not less than twenty-five nor more than fifty dollars for each and every offense. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 257.]

§ 863. Employment of Children Between Fourteen and Sixteen.

All minors over the age of fourteen and under the age of sixteen years, who cannot read and write the English language shall be required to attend school as provided in section 1100 [§ 861 herein] of this chapter, and all provisions of said action shall apply to said minors; provided, that such attendance shall not be required of such minors after they have secured a certificate from the superintendent of schools in districts having superintendents, or the clerk of the board of trustees in districts not having superintendents, that they can read and write the English language. No person, company, or corporation, shall employ any such minor during the time schools are in session, or having such minor in their employ shall immediately cease such employment, upon notice from the truant officer who is hereinafter provided. Every person, company or corporation violating the provisions of this section shall be fined not less than twenty-five nor more than fifty dollars for each and every offense. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 257.]

§ 864. Truant Officers—Powers and Duties.

To aid in the enforcement of this act, truant officers shall be appointed and employed as follows: In districts of the first and second classes the board of trustees shall appoint and employ one or more truant officers; in districts of the third class, the trustees shall appoint if they deem it advisable, a constable or other person as truant officer; in districts not appointing a truant officer, it shall be the duty of the county superintendent to act as truant officer. The compensation of the truant officer shall be fixed and paid by the board appointing him. The truant officer shall be vested with police powers, the authority to serve warrants, and have authority to enter workshops, factories, stores, and all other places where children may be employed, and do whatever may be necessary, in the way of investigation or otherwise to enforce the provisions of this chapter; he is also authorized and it shall be his duty to take into custody the person of any youth be-

tween eight and fourteen years of age, or between fourteen and sixteen years of age when not regularly employed or when unable to read and write the English language, who is not attending school, and shall conduct said youth to the school he has been attending, or which he should rightfully attend. The truant officer shall institute proceedings against any officer, parent, guardian, person, or corporation, violating any provisions of this chapter and perform such other services as the superintendent of schools or the board of trustees may deem necessary to preserve the morals and secure the good conduct of school children and to enforce the provisions of this chapter. The truant officer shall keep a record of his transactions for the inspection and information of the superintendent of schools and the board of trustees; and he shall make daily reports to the superintendent of schools during the school term in districts having superintendents, and to the clerk of the board of trustees in districts not having superintendents as often as required by him. Suitable blanks for the use of the truant officer shall be provided by the clerk of the board of trustees. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 258.]

§ 865. Duties of Principals, Teachers and Clerks.

It shall be the duty of all principals, and teachers of all schools, public, private and parochial, to report to the clerk of the board of trustees of the district in which the schools are situated, the names, ages and residence of all pupils in attendance at their schools, together with such other facts as said clerk may require, in order to facilitate the carrying out of the provisions of this chapter and the clerk shall furnish blanks for such purpose, and such report shall be made during the last week of each month from September to June inclusive, of each year. It shall be the further duty of such principals and teachers to report to the truant officer, the superintendent of public schools, or the clerk of the board of trustees, as the case may be, all cases of truancy or incorrigibility in their respective schools as soon after these offenses have been committed, as practicable. [Amendment approved March 12, 1913; Laws of 1913, c. 76, p. 259.]

§ 866. Prosecution of Truants.

On request of the superintendent of schools, or the board of trustees, or when it otherwise comes to his notice, the truant officer shall examine into any case of truancy or nonattendance within his district, and warn said truant or nonattendant and his parent, guardian, or other person in charge, in writing, of the final consequence of truancy or nonattendance if persisted in. When any child between the ages of eight and fourteen years of any child between the ages of fourteen and sixteen years, who cannot read and write the English language, or who is not regularly employed, is not attending school in violation of the provisions of this chapter the truant officer shall notify the parent, guardian or other person in charge of such child, of the fact, and require such parent, guardian or other person in charge, to cause the child to attend some recognized school within two days from the date of the notice; and it shall be the duty of the parent, guardian, or other person in charge of the child, so to cause its attendance at some recognized school. Upon failure to do so the truant officer shall make complaint against the parent, guardian or other person in charge of the child in any court of competent jurisdiction in the district in which the offense occurs, for such failure, and upon such conviction, the parent,

guardian, or other person in charge shall be fined not less than five dollars, nor more than twenty dollars, or the court may in its discretion, require the person so convicted to give bond in the penal sum of one hundred dollars, with sureties, to the approval of the court, conditioned that he or she will cause the child under his or her charge to attend some recognized school within two days thereafter and to remain at such school during the term prescribed by law; and upon the failure or refusal of any parent, guardian, or other person to pay said fine and costs or furnish said bond according to the order of the court, then said parent, guardian or other person shall be imprisoned in the county jail not less than ten days nor more than thirty days. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 259.]

§ 867. Juvenile Disorderly Persons.

Every child between the ages of eight and fourteen years and every child between the ages of fourteen and sixteen years unable to read and write the English language, or not engaged in some regular employment and who is an habitual truant from school, or who absents itself habitually from school, or who while in attendance at any public, private, or parochial school, is incorrigible, vicious or immoral, in conduct, or who habitually wanders about the streets and public places during school hours, having no business or lawful occupation, shall be deemed a juvenile disorderly person and be subject to the provisions of this chapter. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 260.]

§ 867a. Commitment to Industrial School.

If the parent, guardian, or other person in charge of any child, shall upon the complaint under the last section for a failure to cause the child to attend a recognized school, prove inability to do so, when he or she shall be discharged and thereupon the truant officer shall make complaint that the child is a juvenile disorderly person within the meaning of section 1106 [§ 867 herein] of this chapter. If such complaint is made before any mayor, justice of the peace or police judge, it shall be certified by such magistrate to the district court in and for the county in which the child resides or to a judge of said district court. The district court or the judge thereof to whom the same is certified shall hear such complaint and if it be determined that the child is a juvenile disorderly person within the meaning of section 1106 [§ 867 herein] of this chapter, the said child shall be committed by the said court, or the judge thereof to whom the complaint was certified, to the industrial school hereinafter provided for, where he shall be subject to all rules and regulations of said industrial school; provided, further, that if for any cause the parent, guardian, or other person in charge of any juvenile disorderly person as defined in section 1106 [§ 867 herein] of this chapter shall fail to cause such juvenile disorderly person to attend school, then complaint against such juvenile disorderly person shall be made, heard and determined in like manner as provided in case the parent proves inability to cause such juvenile disorderly person to attend school. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 260.]

§ 868. Pauper Children.

When any truant officer is satisfied that any child, compelled to attend school by the provisions of this chapter is unable to attend school because

absolutely required to work, at home or elsewhere, in order to support itself or help support, or care for others legally entitled to its services, who are unable to support or care for themselves, or who are unable to attend school because of some physical ailment, the truant officer shall report the case to the authorities charged with the relief of the poor, and it shall be the duty of said officers to afford such relief as will enable the child to attend school the time each year required under the provisions of this chapter. Such child shall not be considered or declared a pauper by reason of the acceptance of the relief herein provided for. In case the child or its parents or guardian, refuses or neglects to take advantage of the provisions thus made for its instruction, such child may be committed to the industrial school hereinafter provided for. In all cases where relief, including books, medical aid and clothing, is necessary it shall be the duty of the board of trustees to furnish such aid free of charge and said board of trustees may furnish any further relief it may deem necessary, the expense incident to furnishing said books, medical aid, clothing, and further relief to be paid from the general fund of the school district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 261.]

CHAPTER XII.

SCHOOL LIBRARIES.

§ 869. Library Fund.

A library fund is hereby created, and the board of school trustees must expend the library fund together with such moneys as may be added thereto by donation, in the purchase of books for a school library, including books for supplementary work; provided, that in school districts in which a free public library is maintained such library fund may, in the discretion of the board of trustees, be used for the payment of the current expenses for maintenance of the schools. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 262.]

§ 870. Districts of Third Class.

In districts of the third class, the library fund shall consist of not less than five nor more than ten per cent of the county school fund annually apportioned to the district; provided, that if such ten per cent exceed fifty dollars, fifty dollars only shall be apportioned to the district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 262.]

§ 871. Districts of the First and Second Classes.

In districts of the first and second classes the library fund shall consist of a sum not to exceed fifty dollars for every five hundred children or major fraction thereof, between the ages of six and twenty-one years, annually taken from the general school fund of the county apportioned to such district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 262.]

§ 872. Location and Control of Libraries.

The library shall be under the control of the board of trustees and must be kept, when practicable, in the schoolhouse, and shall be for the use of the pupils and all residents of the district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 262.]

§ 873. Rules—Reports.

The trustees shall be held accountable for the proper care and preservation of the library, and shall make all needful rules and regulations not provided for by the superintendent of public instruction, and not inconsistent therewith; and they shall report annually to the county superintendent all library statistics which may be required by the blanks furnished for the purpose by the superintendent of public instruction. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 262.]

§ 874. Selection of Books.

All books shall be selected by the county superintendent and school trustees, acting together, from lists approved by the superintendent of public instruction. It shall be the duty of the county superintendent in his visits to inspect the library and to make such suggestions regarding its use and care as he may deem advisable. It shall be the duty of the superintendent of public instruction to formulate rules and regulations for the school libraries and furnish to the county superintendent from time to time such instructions and information as will make the use of the library most effective. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 263.]

CHAPTER XIII.**LEGAL HOLIDAYS.****§ 875. What are.**

No school shall be in session on a legal holiday. The days which shall be recognized as legal holidays are Labor Day (the first Monday in September), Columbus Day (October 12), State and National Election Day, Thanksgiving Day, Christmas Day, New Year's Day, Lincoln's Birthday (February 12), Washington's Birthday (February 22), Memorial Day (May 30), Independence Day (July 4), and other days that may hereafter be designated as legal holidays by the legislature or governor. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 263.]

CHAPTER XIV.**SPECIAL DAYS NOT HOLIDAYS.****§ 877. Pioneer Day.**

1. *Date of.*—The first Monday of November of each year shall be designated and known as Pioneer Day in the state of Montana.

2. *Exercises in Public Schools.*—On said Pioneer Day in the public schools the afternoon thereof shall be devoted to the study and discussion of pioneers and pioneer history of the region of country now comprising the state of Montana.

3. *Pioneer Medal.*—The state board of education is hereby authorized to award annually its pioneer medal to the student of the public schools or state institutions who shall on said day deliver the best essay on such subject of pioneer history, having regard to historical research and literary merit.

4. *Copies of Essays to be Deposited With State Historical Library.*—Copies of such essays shall be filed by the said state board of education with

the librarian of the historical and miscellaneous department of the state library.

5. *Courses of Exercises*.—The superintendent of public instruction shall have power and it shall be its [his] duty to prescribe from year to year a suitable course of exercises to be observed in the public schools of the state on Pioneer Day. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 263.]

§ 878. Tree Planting.

1. *Date of*.—The second Tuesday of May in each year shall be known throughout the state of Montana as Arbor Day.

2. *Arbor Day Exercises*.—In order that the children in our public schools shall assist in the work of adorning the school grounds with trees, and to stimulate the minds of the children toward the benefit of preservation and perpetuation of our forests and the growing of timber, it shall be the duty of the authorities in every public school district in the state to assemble the children in their charge on the above day in the school building or elsewhere, as they may deem proper, and to provide for and conduct under the general supervision of the city superintendent, county superintendent, teachers and trustees of other school authorities having the general charge and oversight of the public schools in each city or district, to have and hold such exercises as shall tend to encourage the planting, preservation and protection of trees and shrubs, and an acquaintance with the best methods to be adopted to accomplish such results.

3. *Course of Exercises*.—The superintendent of public instruction shall have power to prescribe from year to year a course of exercises and instruction in the subject hereinbefore mentioned, which shall be adopted and observed by the said public school authorities on Arbor Day. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 264.]

CHAPTER XV.

CITY SUPERINTENDENT OF SCHOOLS.

§ 879. City Superintendent of Schools.

In districts of the first and second class the board of trustees of such districts may appoint a superintendent of schools of the district. He shall be appointed for such term, not exceeding three years, as the board may deem proper and be paid such salary from the general school fund as is fixed by the board of trustees; provided, that after his second successive employment he shall be deemed elected from term to term of three years each thereafter, unless the board of trustees shall by a majority of the votes of its members give notice to such superintendent on or before the first of February of the last year of the term of his employment that his services will not be required for the ensuing term. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 264.]

§ 880. Qualifications.

The person appointed to such position shall be a holder of a state certificate of the highest grade, issued in some state, or a graduate of some reputable university, college or normal school, and shall have taught in

public schools at least five years. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 265.]

§ 881. Duties.

The superintendent shall have supervision of the schools of the district under the supervision of [the] board of trustees. He shall be the executive officer of the board and shall perform such duties as the board of trustees may prescribe. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 265.]

§ 882. Certain Employment Prohibited.

No city superintendent shall engage in any work that will conflict with his duties as superintendent. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 265.]

CHAPTER XVI.

SCHOOLHOUSE SITES.

§ 883. Selection.

Whenever, in the judgment of the board of trustees of any school district of the third class, it is desirable to select, purchase, exchange or sell a schoolhouse site, or whenever petitioned so to do by one-third of the voters of such district, the district board, shall without delay call a meeting at some convenient time and place fixed by the board, to vote upon such question of selection, purchase, exchange or sale of schoolhouse site. Such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers. Three notices giving the time, place, and purpose of such meeting shall be posted in three public places in the district by the clerk at least ten days prior to such meeting. If a majority of the voters present at such meeting shall by vote decide to select, purchase, exchange or sell the schoolhouse site, the board shall carry out the will of the voters thus expressed; provided, that it shall require the concurrence of a majority of the voters of the district to order the change of a schoolhouse site and any sites so changed cannot again be changed within three years from the date of such action.

The school site shall be selected in a place that is convenient, accessible, suitable, and well drained, provided that in districts of the first and second class the site shall not be less than one-half of an average city block, and in districts of the third class shall contain not less than one acre. The state board of land commissioners shall have authority to sell to any school district at the appraised value or to lease for any period of time less than ninety-nine years, at a rental of one dollar per year any tract of state land not exceeding ten acres, to be used for schoolhouse site. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 265.]

The provision of section 1797 of the Political Code in regard to the removal of schoolhouses and the purchase or sale of school lots when directed by vote of the district, is not only a grant of power to school boards, but also a limitation upon their power, both as to its extent and as to the mode of its exercise, so that they cannot do any of the acts referred to without first obtaining the consent of the electors. *State v. Lyons*, 37 Mont. 354, 362, 96 Pac. 922.

Mandamus is the proper remedy to require the trustees of a school district to determine the location of a site for a schoolhouse, where they arbitrarily remove a school to a site selected by themselves, without consulting the electors; a resident and taxpayer of the school district is a party beneficially interested and entitled in such case to make the application. *State v. Lyons*, 37 Mont. 354, 365, 96 Pac. 922.

§ 884. Architecture.

No schoolhouse shall hereafter be erected, repaired, or enlarged in any school district of the state at an expense which shall exceed five hundred (\$500) dollars, until the plans and specifications thereof shall have been submitted to the state board of health, and its approval indorsed thereon; provided that districts of the second and third class shall also have the approval of the superintendent of public instruction. Such plans and specifications shall show in detail the ventilation, the heating and lighting of such building. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 266.]

§ 885. Floor Space—Air—Light.

The board of health shall not approve plans for the erection of any school building or addition thereto, or remodeling thereof, unless the same shall provide (a) at least fifteen square feet of floor space and two hundred cubic feet of air space for each pupil to be accommodated in each study or recitation room therein; (b) at least thirty cubic feet of pure air per minute per pupil shall be furnished by a satisfactory ventilating system, which should also provide means for exhausting the foul or vitiating air from the room.

The light shall come from the left or from the left and rear of each schoolroom, and the window space shall be not less than one-seventh of the floor space of each room. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 266.]

§ 886. Penalties.

The county treasurer shall not make any payments on any contract arising under the provisions of this chapter until the contractor furnishes a certified statement signed by the state board of health that the plans and specifications of the school building to be erected or remodeled, have been fully approved by the state board of health. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 266.]

§ 887. Suggestive Plans.

It shall be the duty of the state board of health to furnish to all districts of the third class suggestive plans for school buildings to be erected in conformity with the above rules. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 267.]

§ 888. Vestibules.

No one and two-room schoolhouses shall be erected without a vestibule of reasonable size. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 267.]

§ 889. Care of Schoolhouses.

It shall be the duty of boards of trustees in districts of the third class to require that the schoolroom or rooms shall be thoroughly scrubbed and cleaned, including the floors, interior wood work and windows, at least once every three months. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 267.]

§ 889a. Water Supply and Toilet Accommodations.

The board of trustees shall furnish such water supply and toilet accommodations as shall be approved by the state board of health. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 267.]

CHAPTER XVII.
INDUSTRIAL EDUCATION.

§ 890. Provisions.

1. Elementary manual and industrial training which shall include industrial art may form a part of the required course of study in all grades of the public schools of the state of Montana. The superintendent of public instruction shall formulate a course of study, or he may approve courses of study formulated by local school officials, which meet the requirements of this section. The clerk of each school district in his annual report to the county superintendent shall state whether the above provisions have been complied with within the schools of his district.

2. All school districts having a population of more than five thousand shall, and districts of less population may, maintain at least one manual training school suitably equipped and designated to furnish manual and industrial instruction to pupils who are above the fifth grade. Said schools shall furnish instruction in elementary wood, metal and textile work; in mechanical and industrial drawing; and in communities where applicable in agriculture, mineralogy, and technical mining; and for girls above the first grade, instruction in household management, decoration and economics, and in needlework. They shall also include instruction in industrial history and geography; and in the industrial materials; processes, and products with special reference to the industrial pursuits of the communities in which they are situated.

The courses to be presented in these schools shall provide:

1. A general culture, intelligence and skill for those pupils whose school attendance will end with the elementary or secondary grades; and

2. A progressive development designed to prepare directly for efficient work in the related technical and scientific courses of the higher institutions of learning.

The courses shall be modified to meet in the largest measure the needs of each class of pupils.

Nothing in this section shall be understood as forbidding any school from using other materials than those herein specified nor as preventing a different assignment of work by grades, provided that all courses shall have the approval of the state board of education.

Teachers of such schools shall have had special preparation for such instruction and shall be holders of special manual training teachers' certificates, which the superintendent of public instruction is hereby empowered to grant, when satisfied that the applicant has received a sufficient general education and the professional and technical preparation necessary for such manual and industrial training.

3. In all school districts having a population of over ten thousand, there shall be, and in school districts of less population, there may be maintained schools of special courses in connection with manual training, or city or county high schools designed to furnish a direct vocational training, including training in agricultural pursuits and mining for which there shall be a local demand. Classes shall be formed when not less than twenty applicants desire instruction in any vocation. Pupils who have reached the age of twelve years and who have completed not less than the general school work assigned to the first five grades may be admitted to these

courses upon such terms as the board of trustees of the district may prescribe; pupils above the age of fourteen, together with adults may be admitted to evening classes, providing similar instruction upon such terms of admittance as the trustees may prescribe, provided that there shall in no case be any charge for tuition. Teachers of such classes shall be holders of special certificates issued by the superintendent of public instruction, specifying the subject or subjects which the holder is entitled to teach. Applicants for such certificates must present satisfactory evidence not only of general educational qualifications, but of special training and practical experience in the vocations, which they are to teach.

4. The trustees of any district are hereby empowered to use moneys from the general school fund of the district for the maintenance of manual and industrial schools and courses the same as for other school purposes; provided, that the state treasurer shall pay annually from any funds in his possession not otherwise appropriated ten (\$10) dollars to each district for each person attending such manual and industrial courses for a period of six months or more yearly; provided, further, that the state treasury shall likewise pay annually to any county high school which maintains a manual training department, from any funds in the state treasury, not otherwise appropriated, the sum of ten (\$10) dollars for each child or student attending the manual training department in such county high school for a period of six months or longer yearly. Buildings and furnishings and equipment for manual and industrial training shall be provided in the same manner as now prescribed for the erection and furnishing of buildings for other school purposes.

5. To secure an efficient administration of this act the state board of education shall determine whether such manual and industrial schools and courses meet the provisions of the law. Such schools as do not meet the provisions of this act shall not be entitled to state aid until all defects are remedied. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 267.]

CHAPTER XVIII.

TEXT-BOOKS.

§ 891. Appointment of State Text-book Commission.

The governor is hereby authorized to nominate and appoint a state text-book commission consisting of seven members, five of whom shall be persons actively engaged in public school work of the state or in state educational institutions at the time of their appointment. The terms of the members of said commission shall be for a period of five years each. If a vacancy occurs during the terms of any of the members, of said commission by reason of death, resignation or otherwise, the Governor shall make appointment to fill such vacancy and the person so appointed shall hold office until the expiration of the term for which the person he succeeded was appointed. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 267.]

§ 892. Organization of Commission.

The commission at its meeting shall organize by taking the constitutional oath of office, which oath shall be filed in the office of the Secretary of State; electing from among the members a president and secretary and

formulating rules for its government. Five members shall constitute a quorum for the transaction of all business. All votes cast for or against the adoption of any text-books shall be recorded in the minutes of the commission, together with the names of those voting for or against such adoption; provided, that all meetings shall be opened to the public and that said commission must make a full report to the Governor not later than the first Monday in November next preceding any regular or special meeting of the legislature. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 270.]

§ 893. Meeting of Commission.

The state text-book commission shall meet in the state capital in the city of Helena, on the third Monday in January, 1917, and every second year thereafter, and the president of said commission shall call a meeting thereof on the first Monday of October, 1916, and every second year thereafter for the purpose of considering in what subjects, if any, as hereinafter provided, text-books shall be changed, and expiring contracts extended; provided, that changes shall not be made in the text-books of more than three subjects at any meeting.

He must also upon ten days' written notice to the members to be given by the secretary, call a meeting of the commission at any time to receive proposals and to enter into contracts with publishers for supplying text-books whenever contracts for certain books heretofore entered into become terminated by rescission or otherwise cease to be in full force and effect, and to adopt additional supplementary books whenever it is deemed for the best interests of the schools of the state. Said text-book commission may adjourn from day to day until it shall have made adoptions as provided for in this chapter. The session of said commission shall not continue beyond six actual days, and nothing herein contained shall be so construed as to have any reference to the provisions of this act relating to school libraries. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 270.]

§ 894. Contracts for Supplying Text-books.

Beginning with November 1, 1916, and every second year thereafter, the superintendent of public instruction shall, if any changes have been recommended, advertise for thirty days in two daily newspapers in this state, giving notice that the text-book commission will meet, as herein provided, and that they will receive sealed proposals up to 12 o'clock noon, of said third Monday in January next following, for supplying the state of Montana with such basal and supplementary text-books as the commission have considered desirable to be changed, for use in all the public schools of said state, for a period of six years from and after the first day of September, 1917; and all contracts under this act shall further provide that they may be extended after their expiration at the option of the commission, and at not to exceed the schedule of prices agreed upon therein; and the contracts in existence at the time of the passage of this act may be extended after expiration for not to exceed four years, at the option of the commission, and at not to exceed the schedule or prices agreed upon therein. The commission shall make contracts for text-books in the following branches, to wit: Reading, spelling, writing, arithmetic, geography (elementary and advanced), language and grammar, physiology and hygiene, civil government (state and national), history of the United States (elementary and advanced).

Said commission are hereby empowered to adopt such other text-books supplementary to the basal text-books above referred to, as they may deem advisable. Said sealed proposals shall be addressed to the chairman of the state text-book commission, Helena, Montana, and shall be indorsed "Sealed proposals for supplying text-books for use in the state of Montana." Said proposals shall state the net wholesale prices at which the publishers whose books may be adopted by the text-book commission, will agree to deliver the same F. O. B. text-book depositories in Montana, and to merchants or to school districts purchasing the same. They shall also state the introductory price without exchange, and the exchange price for new books adopted in exchange for the old books in the hands of the pupils, and for the new books in the hands of the districts or dealers, which may be displaced, grade for grade; provided that when pupils own their books they may exchange one of a lower grade for one of a higher; and shall further state the retail price at which they will keep all the text-books so adopted on sale uniformly in at least one place in each county throughout the state. Whenever any contract shall be terminated by rescission, or shall otherwise cease to be in force and effect, the text-book commission shall, within ten days after the termination of such contracts, advertise in the same manner and for the same length of time as elsewhere mentioned in this section for proposals to furnish text-books on the same subject as those embraced within such contract for the same length of time, and bids shall be received in the same manner as hereinbefore provided. The publishers contracting and agreeing to supply text-books for use in the state of Montana under the provisions of this act, shall cause to be prepared a special map and special supplement descriptive of Montana for the geography adopted by said commission. They shall also cause to be prepared a special supplement for Montana for the civil government adopted, which supplement shall contain not less than one hundred pages. They shall further agree to maintain the mechanical excellence of the books adopted by said commission fully equal to the samples submitted, in binding, quality of paper, and other essential features. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 270.]

§ 895. Selection of Text-books.

It shall be the duty of said text-book commission to meet at the time and place mentioned in said notice and open sealed bids in the presence of a quorum of said commission, and in public, to select and adopt such text-books, both basal and supplementary for use in all the public schools of this state. The text-book so selected and adopted by said text-book commission, shall be certified to by the chairman and secretary, and said certificate, with a copy of all the books named therein, shall be placed on file in the office of the superintendent of public instruction. Such certificate must contain a complete list of all books adopted by said commission, giving the wholesale, retail, introductory, and exchange prices for which each kind and grade will be furnished, as provided in the preceding section, and the name of the publishers contracting to furnish the same. The said books named in said certificate shall for such period as is provided in the contract or extension thereof from and after the first day of September of the year in which they are adopted be used in all public schools of the state to the exclusion of all others. Provided, that nothing in any part of this act shall be so construed as to prevent the purchase or use by any district of any

reference books for use in any of the schools of the state. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 273.]

§ 896. Contracts and Agreements.

The said text-book commission shall have power to make contracts and agreements for the use and supply of text-books in the name of the state as they shall deem necessary for the best interest of the public schools of the state, and shall require of all publishers contracting and agreeing to furnish books adopted by the said text-book commission, bonds equal in amount to one-half the value of the books to be furnished, conditioned that upon the failure on the part of such publishers to comply with the terms of such contracts or any part thereof, in any county of the state, upon notice being given as provided for herein, said bonds may by the Governor of the state of Montana, be declared forfeited, and actions brought in the name of the state upon such bonds to recover the full amount named therein which amount shall be deemed to be fixed and liquidated damages for the breach of such contracts; provided, that the text-book commission may, at their discretion, reject any and all proposals if it be deemed by them to be to the interest of the state so to do, and they shall advertise for new proposals, stating the time when such new proposals will be received by them, not later, however, than thirty days from the rejection of the first proposals; provided, further, that the contract price of such books F. O. B. depositories in Montana, allowing difference for freight, shall not exceed the lowest wholesale price charged for the same books to any other state of the United States. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 273.]

§ 897. Bond for Performance of Contracts.

The contract with the publishers shall take effect only when the publishers of the books adopted by the said text-book commission shall have filed with the Secretary of State their bond, with at least two sufficient sureties, to be approved by the Governor in such sum as shall be determined, by said text-book commission conditioned, that they shall comply with the terms of their proposal to the state and such conditions as may be agreed upon between said text-book commission and the publishers contracting with the state. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 273.]

§ 898. Forfeiture of Contract for Nonperformance.

In case of [the] publishers of the books adopted by the said text-book commission shall not on or before the 15th day of February, of the year in which the text-books are to be adopted have filed with the Secretary of the State their bond as hereinbefore provided, on or before the 15th day of February of said year, or in case they shall not on or before the 15th day of June of said year have performed all the obligations of their contracts with respect to the exchange and introduction of books and the preparation and supply of the special maps, and the special descriptive matter for the geography so adopted, or the special supplement for the civil government, or in case they shall at any time thereafter violate or fail to perform any of the conditions specified in their bond as hereinbefore provided, and shall fail within reasonable time after due notice has been given by the governor to make good their guaranty in any respect in which they may have failed, then this adoption shall become null and void. The said text-book adopted by the said text-book commission under this act and upon compliance of the pub-

lishers of the conditions aforesaid shall continue in use for the period of not less than five years from the first day of September of the year above mentioned to the exclusion of all others except as herein otherwise provided. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 274.]

§ 899. Price List of Books to be Printed and Distributed.

Whenever the publishers of the books adopted under the provisions of this bill, shall have filed their bonds as hereinbefore provided, it shall be the duty of the state superintendent of public instruction to cause all prices of the text-books as guaranteed by the publishers to be properly printed and distributed through the county superintendents to the trustees of all school districts in the state, who shall cause the same to be kept constantly posted in a conspicuous place in each schoolroom in their districts, and it shall be the duty of the several county superintendents to keep themselves informed as to whether such prices are actually maintained by the said publishers, and at once notify the superintendent of public instruction of the violation of the contracts entered into by virtue of the authority contained in this act, which may come to their knowledge, and it shall be the duty of the superintendent of public instruction to promptly communicate such information to the Governor. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 275.]

§ 900. Penalty for Using Other Than Selected Books.

Any school officer, teacher or trustee, who shall use or provide for the use in the public schools of the state, text-books other than those adopted by the said text-book commission, except as herein otherwise provided, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 275.]

§ 901. Annual Report as to the Use of Books.

All county superintendents and all school officers are charged with the execution of this law, and the county school superintendent shall require the trustees of the several school districts or the clerks thereof, to report annually whether or not the authorized text-books are used in their schools. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 275.]

§ 902. Election upon Proposition to Supply Free Text-books.

Upon the petition of five legal voters of any school district other than in incorporated cities, and upon petition of one hundred legal voters in incorporated cities, towns, and villages, filed with the board of trustees or board of education, it shall be the duty of the board of trustees or board of education as the case may be, to notify the voters of such school district that an election "for" or "against" free text-books will be held at the next ensuing election for the members of the board of trustees or board of education, and the ballots to such effect shall be received and canvassed at such election, and if a majority of all votes cast in the district shall be found to be in favor of free text-books, it shall be the duty of the board of trustees or board of education, as the case may be, to purchase at the expense of such district all the text-books required for use of all pupils attending school in such school district, and said text-books shall be loaned to the pupils of said public schools, free of charge, subject to such rules and regulations,

as to care and custody, as the board of trustees or board of education shall prescribe; provided, that the pupils may purchase at cost any of the text-books to be furnished, when desired by them. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 275.]

§ 903. Special Levy to Provide Free Text-books.

That for the purpose of raising money to pay for school books, which may be furnished to the pupils free of charge by any district adopting free text-books, a special levy upon the taxable property of such district, shall be made by the county commissioners of the district, if the money received from the general fund from the district be insufficient, and said levy shall be made within thirty days from and after the adoption of said free text-books in any district that has by a majority vote adopted the same, and when made the tax levied shall be collected in the same manner as other taxes are collected; provided, further, that any district that shall furnish free text-books shall have the right, through its board of trustees, to adopt supplementary books within the meaning of this act, when such adoption has been authorized by a two-thirds vote of the trustees of said district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 276.]

§ 904. Compensation of Text-book Commissioners.

The members of said text-book commission provided for by this act, shall receive the sum of six dollars per diem for each day necessarily engaged in transacting business and while in session, and actual traveling expenses; and there is hereby appropriated the sum of one thousand dollars per year, or so much thereof as may be necessary to carry out the provisions of this act; provided, that said commission shall not be in session more than ten days in any one year. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 276.]

Editorial Notes.

Statutory regulation of text-books used

in public schools. See note in Ann. Cas. 1912B, 476.

CHAPTER XIX.

INDUSTRIAL SCHOOLS.

§ 905. Industrial Schools—Where Established.

In school districts having a population of twenty-five thousand or more, there shall be maintained an industrial school for the purpose of affording a place of confinement, discipline, instruction, and maintenance of children of compulsory school age, who may be committed thereto according to the provisions prescribed in section 1107 [§ 867a herein]. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 276.]

§ 906. Purchase of Site and Building.

For the purpose of maintaining such school or schools, sites may be purchased and buildings constructed or premises rented in the same manner as is provided for in the case of public schools in such districts; but no school shall be located at or near any penal institution. And it shall be the duty of the board of trustees to furnish such schools with such furniture, fixtures, industrial and other apparatus, and provisions as may be necessary for the maintenance and operation therefor. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 276.]

§ 907. Employment and Regulation of Teachers.

The board of trustees may also employ a principal and other necessary officers, agents, and teachers, and shall prescribe the methods of discipline and the course of instruction; and shall exercise the same powers and perform the same duties as is prescribed by law for the management of other schools.

No religious instructions shall be given in said school, except as allowed by law to be given in public schools; but the board of trustees may make suitable regulation so that the inmates may receive religious training in accordance with the belief of the parents of such children, by arranging for attendance at public services elsewhere. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 277.]

§ 908. Parents to Provide Clothing.

It shall be the duty of the parent or guardian of any child committed to this school, to provide suitable clothing upon his entry into such school, and from time to time thereafter as it may be needed, upon notice in writing from the principal or other proper officer of the school. In case any parent or guardian shall refuse or neglect to furnish such clothing, the same may be provided by the board of trustees, and such board may have an action against such parent or guardian of said child to recover cost of such clothing, with ten per cent additional thereto. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 277.]

§ 909. Rules and Regulations of School.

The board of trustees of such district shall have power to establish rules and regulations under which children committed to such industrial school may be allowed to return home upon parole, but to remain while upon parole in the legal custody and under control of the officers and agents of such school and subject at any time to be taken back within the inclosure of such school by the principal or any authorized officer of said school except as hereinafter provided; and full power to enforce such rules and regulations to retake any such child so upon parole is hereby conferred upon said board of trustees. No child shall be released upon parole in less than four weeks from the time of his commitment, nor thereafter until the principal of such industrial school shall have become satisfied from the conduct of such child, that, if paroled, he will attend regularly the public or private school to which he may be sent by his parents or guardians, and shall so certify to the board of trustees. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 277.]

§ 910. Paroled Children.

It shall be the duty of the principal or other person having charge of the school to which children so released on parole may be sent, to report at least once each month to the principal of the industrial school, stating whether or not such child attends school regularly and obeys the rules and regulations of said school; and if such child so released upon parole shall be regular in his attendance at school, and his conduct as a pupil shall be satisfactory for a period of one year from date on which he was released upon parole, he shall then be finally discharged from the industrial school, and shall not be recommitted thereto except as hereinbefore provided. [Amendment Approved March 12, 1913; Laws 1913, c. 76, p. 278.]

§ 911. Recombitment of Paroled Children.

In case any child released from school upon parole, as hereinbefore provided, shall violate the conditions of his parole at any time within one year thereafter, he shall upon the order of the board of trustees, as hereinbefore provided, be taken back to such industrial school, and shall not be again released upon parole within the period of three months from the date of such re-entering; and if he shall violate the conditions of a second parole, he shall be recommitted to such industrial school, and shall not be released therefrom on parole, until he shall remain in such school at least one year. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 278.]

§ 912. Incurrigibles.

In any case where a child is incorrigible and his influence in such industrial school is detrimental to the interests of the other pupils, the board of trustees may authorize the principal or any other officer of the school to represent these facts to the district court by petition; and the court shall have power to commit said child to the State Reform School. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 278.]

§ 913. Industrial Schools in Small Districts.

The board of trustees in districts having a population less than twenty-five thousand may establish, maintain and operate an industrial school for the purpose hereinbefore specified, and in case of the establishment of such school the board of trustees shall have like power in their respective districts as hereinbefore expressed; provided, that no board of trustees under this section shall put this law into effect until submitted to a vote at some general or special election. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 278.]

§ 914. Receiving Pupils from Other Districts.

Boards of trustees in districts where there is established and in operation an industrial school, may if the accommodations permit, receive pupils from other districts who have been committed thereto, upon the payment from the district in which the child resides, at such rate of tuition as the board of trustees may fix. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 279.]

§ 915. Penalties and Fines for Neglect of Official Duty.

Any officer, principal, or other person mentioned in this chapter neglecting to perform any duty imposed upon him by this chapter, shall be fined not less than twenty-five (\$25) nor more than fifty (\$50) dollars, for each offense. Any officer or agent of any corporation violating any provisions of this chapter, and who participates or acquiesces in or is cognizant of such violation, shall be fined not less than twenty-five (\$25) dollars nor more than fifty (\$50) dollars. Any person who violates any provisions of this chapter for which a penalty is not elsewhere in this chapter provided for, shall be fined not more than fifty (\$50) dollars. Mayors, justices of the peace, police judges, and district courts shall have jurisdiction to try the offenses described in this chapter. When complaint is made, information filed or indictment found against any corporation for violating this chapter, summons shall be served, appearance made,

or plea entered, as provided by the laws of Montana, except that in complaint before magistrates, service shall be made by the constable. In all other cases process shall be served, and proceedings had, as in cases of misdemeanor. All fines collected under the provisions of this chapter shall be paid into the funds of the school district in which the offense was committed. Board of trustees are authorized to employ legal counsel to prosecute any case arising under the provisions of chapter when they shall deem the same necessary, and the services of such counsel shall be paid from the general fund of the district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 279.]

§ 916. Penalties for Repeated Violation of the Chapter.

Every person, who, after being once convicted for violating any of the provisions of this chapter, shall be convicted of again violating any of the provisions of this chapter, may, in addition to the punishment by way of a fine elsewhere provided for, be imprisoned not less than ten days nor more than thirty days. On complaint, before mayor, justice of the peace, or police judge of a second violation of this chapter involving punishment by imprisonment, if a trial by jury be not waived, a jury shall be chosen and the case tried, after the manner provided in the laws of Montana. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 279.]

§ 917. Duty of Trustees to Provide Sufficient Accommodations.

It is hereby made the duty of every board of trustees in this state to provide sufficient accommodations in the public schools for all children in their district compelled to attend public schools under the provisions of this chapter. Authority to levy tax and raise the money necessary for such purpose, is hereby given the proper officers charged with such duty under the law. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 280.]

§ 918. Cost of Prosecutions.

No officer or person instituting proceedings under this chapter shall be required to advance money or give security for costs; and if a defendant is acquitted or discharged, or if convicted, and committed to jail in default of payment of fine and costs, the justice, mayor, police judge or district court, before whom such case was brought shall certify such costs to the county auditor, who shall examine, and if necessary correct the account, and issue his warrant to the county treasurer in favor of the respective persons to whom such costs are due for the amount due each. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 280.]

CHAPTER XX.

FINANCE.

§ 919. Permanent School Funds.

The principal of the state school fund shall remain irreducible and permanent. That said fund shall be derived from the following sources,—to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or common schools; the proceeds of land and (and) other property which revert to the state by es-

cheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, materials or other property from school lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 15 of the enabling act; the principal of all funds arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools and such other funds as may be provided by the legislative enactment. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 280.]

§ 920. Common School Levy.

In addition to the provisions for the support of common schools, hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual tax of four mills on the dollar of the assessed value of all taxable property, real and personal, within the county which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected. For the further support of the common schools, there shall also be set apart by the county treasurer all moneys paid into the county treasury, arising from all fines or violations of law, unless otherwise specified by law. Such money shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by taxing each county and dividing in the same manner. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 281.]

§ 921. Special School Tax.

On or before the day designated by law for the commissioners of each county to levy the requisite taxes for the then ensuing year, the school board in each school district shall certify to the county commissioners the number of mills per dollar which it is necessary to levy on the taxable property of the district, not to exceed ten mills, to raise a special fund to maintain the schools of said districts, to furnish additional school facilities therefor, and to furnish such appliances and apparatus as may be needed, and, in districts of the first and second class, the trustees thereof must make such special levy, or so much thereof as may be necessary to maintain a school term of at least nine months in each year, and the county commissioners shall cause the same to be levied at the same time that other taxes are levied, and the amount of such special tax shall be assessed to each taxpayer of such district, and shall be placed in a separate column of the tax book, which shall be headed, "Special School Tax."

There shall also be a column in said tax book, which shall be designated the number of the school district in which the property is listed. This tax, when collected, shall be placed to the credit of the proper district, and shall be subject to the order of the district board. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 282.]

§ 922. Apportionment.

All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school census children between six and twenty-one years of age, as shown by the returns of the district clerk for the next preceding school census; provided, that Indian children, who are not living under the guardianship of white persons, shall not be included in the apportionment list, unless the parents thereof are citizens of the United States or have taken land under the allotment and severalty act of Congress and have severed their tribal relations. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 282.]

§ 923. Purposes for Which Money may be Used.

County school moneys may be used by the county superintendent and trustees for the various purposes, as authorized and provided in this act, and for no other purpose, except that in any district, any surplus in the general school fund to the credit of said district, after providing for the expenses of not less than nine months' school, on a vote of the qualified electors of said district may be used for the purpose of retiring bonds and improving buildings and grounds. If any school money shall be paid by authority of the board of trustees for any purpose not authorized by this chapter, the trustees consenting to such payment shall be liable to the district for the repayment of such sum, and a suit to recover the same may be brought by the county attorney, or, if he shall refuse to bring the same, a suit may be brought by any taxpaying elector in the district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 282.]

§ 924. Transfer of Road Funds.

It shall be the duty of the county treasurer in each county in this state upon an order of the board of county commissioners, to transfer any and all sums of money raised by county road tax and apportioned to certain road districts that shall have remained one year to the credit of any road district unused or unapportioned to the credit of the particular school district or districts whose boundaries are coterminous, or nearly so, with those of the road district to whose credit said moneys were originally apportioned. A certificate by the road supervisor that such moneys are not needed for immediate use in building or repairing roads in his district, accompanied by the petition of ten residents of such district that such transfer be made, shall be made sufficient warrant for the county treasurer to make such transfer when approved by the board of county commissioners, and the official maps of the several road and school districts of the county shall determine the districts to which the transfers are to be made. Moneys so received to the credit of any particular school district may be applied by the trustees thereof to the payment of any outstanding district indebtedness, or like other funds, to the ordinary expenses of the district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 282.]

§ 924a. Proceeds of Town Lots.

All moneys arising from the sale of town lots under and by virtue of the several acts of the legislative assembly of the state of Montana relating to town sites, that are now or that hereafter may come into the hands of any clerk of the district court, or the corporate authorities of any city or

town of the state shall be paid into the county treasury of the county for the use and benefit of the common schools of the school district in which such city or town is situated, to be used as provided for in this chapter. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 283.]

§ 925. Building and Furnishing Fund.

The county treasurers of the several counties of this state shall transfer all moneys so paid into said treasury as provided for in section 2006 [§ 924a herein] of this chapter or that may now be in such treasury, derived from said source, to the school fund of the school district in which said town is situated, which shall be paid out on the order of the school trustees of such district, as provided for in section 2008 [§ 926 herein] of this chapter; and which said moneys shall be by said treasurer set apart as a special fund for the purpose of building and furnishing schoolhouses, and shall be used for such purpose alone, unless otherwise ordered, as provided for in this chapter. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 283.]

§ 926. Warrants.

The school trustees of any school district are hereby authorized to draw warrants on said fund named in sections 2006 and 2007 [§§ 924a, 925 herein] of this chapter, for the purpose of building and furnishing a schoolhouse in such place, in the town or city from the sale of lots out of which such funds arose, as they may designate, which said warrants or orders shall specify the fund on which the same are drawn and for what purpose drawn. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 283.]

§ 927. Transfer of Funds—Election.

Said fund may be used for general school purpose, if a majority of the qualified electors of such district shall so elect, upon such question being duly submitted to them at any regular or special election therefor. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 284.]

§ 928. Duties of County Treasurer.

It shall be the duty of the county treasurer of each county.

1. To receive and hold all school moneys as special deposit and to keep a separate account of their disbursements to the several school districts which shall be entitled to receive them according to the apportionment of the county superintendent.

2. To render quarterly beginning September 1st, each board of trustees, through its chairman, an itemized statement of warrants paid and moneys received for the district for the preceding quarter.

3. To notify the county superintendent of public schools of the amount of county school fund in the county treasury subject to apportionment whenever required, and to inform said county superintendent of the amount of school moneys belonging to any other fund subject to apportionment.

4. To pay all warrants drawn on county or district school moneys in accordance with the provisions of this chapter, whenever such warrants are countersigned by the district clerk and also countersigned by the county superintendent, provided in section 513 [§ 822 herein] of this act.

5. To make annually, during the month of October in each year, a financial report for the last school year and fiscal year ending with June thirtieth, to the county superintendent of public schools, in such form as

may be required by him. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 284.]

§ 929. Duty of County Assessor.

It shall be the duty of the county assessor in each county in the state to make a report to the county superintendent of schools within his county on or before the 20th day of August in each year, giving the assessed valuation of the several school districts of the county for that year. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 284.]

§ 930. Duty of Clerk of District Court.

It shall be the duty of the clerk of the district court, at the close of every term thereof, to report to the county superintendent of the county in which said term shall have been held, whether or not any fines, and if any, what ones, were imposed by said court during the said term. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 284.]

§ 931. Duty of the Justice of the Peace.

It shall be the duty of each justice of the peace of each county to report to the county superintendent during the month of September in each year, whether or not they have imposed and collected any fines during the preceding year, and if any, what ones, with the date at which the same were paid to the county treasurer. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 285.]

§ 932. Penalty.

All officers mentioned in sections 2010, 2011, 2012, 2013 [§§ 928 et seq. herein] of this chapter who shall fail or neglect to perform any of the duties required by this chapter shall be deemed guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction thereof, shall be fined in any sum not less than twenty dollars and not more than one hundred dollars for each neglect; and such fine shall be paid into the county treasury for the benefit of the public schools of said county. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 285.]

§ 933. Bonds—How Issued—Election—Limit.

The board of school trustees of any school district within this state shall, whenever a majority of the school trustees so decide, submit to the electors of the district the question whether the board shall be authorized to issue coupon bonds to a certain amount, not to exceed three per cent of the taxable property in said district, and bearing a certain rate of interest not exceeding six per cent per annum, and payable and redeemable at a certain time, for the purpose of building and furnishing one or more schoolhouses in said district, and purchasing land necessary for the same. Should the trustees of any school district in which bonds have heretofore been issued to any amount, desire to submit to the electors of the district the question as to whether additional bonds shall be issued they may do so, but no such bonds shall be issued unless a majority of all votes cast at any such election shall be cast in favor of such issue of additional bonds; and in no case shall the whole issue of bonds exceed the amount of three per cent of the taxable property within said school district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 285.]

§ 934. Manner of Holding Election—Ballots—Voting.

Such election shall be held in the manner prescribed for the election of school trustees. The ballots shall be in the form as follows: "Shall bonds be issued and sold to the amount of . . . dollars, and bearing not to exceed . . . per cent interest and for a period not to exceed . . . years, for the purpose of purchasing a school site and building a schoolhouse thereon and for furnishing the same."

Bonds. Yes.

Bonds. No.

The elector shall prepare his ballot by putting a cross before "Bonds Yes" if he wishes to vote for the bonds and before "Bonds No" if he wishes to vote against the bonds. If a majority of the votes cast at such election are "Bonds. Yes," the board of school trustees shall issue such bonds in such form as the board may direct and they shall bear the signature of the chairman of the board of trustees and shall be signed by the clerk of the said school district; and the coupons attached to the bonds shall be signed by the said chairman and clerk, provided, a lithographic or engraved facsimile of the signatures of the chairman and clerk may be affixed to coupons only, when so recited in the bonds, and the corporate seal of the school district shall be attached to each of the bonds; and each bond so issued shall be registered by the county treasurer in a book provided for that purpose, which shall show the number and amount of each bond, and the person to whom the same is issued or sold; and the said bonds shall be sold by the trustees as hereinafter provided. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 285.]

§ 935. Notice of Sale of Bonds.

The school trustees shall give notice by advertisement in some newspaper published in this state, for a period of not less than four weeks to the effect that the said school trustees will sell said bonds (briefly describing the same), and stating the time when, and place where, such sale will take place; provided, that the said bonds shall not be sold for less than their par value, and that the said trustees are authorized to reject any bids, and to sell said bonds at private sale, if they deem it for the best interests of the district; and all moneys arising from the sale of said bonds shall be paid forthwith into the treasury of the county in which such district may be located to the credit of said district, and the same shall be immediately available for the purpose of building or providing the schoolhouses authorized by this chapter; provided, that no such bonds shall be delivered by the board of trustees unless the moneys therefor have been paid into the county treasury. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 287.]

§ 936. School District Liable on Bonds.

The faith of each school district is solemnly pledged for the payment of the interest and the redemption of the principal of the bonds which shall be issued under the provisions of this chapter. And for the purpose of enforcing the provisions of this chapter, each school district shall be a body corporate, which may sue and be sued by or in the name of the board of school trustees of such district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 287.]

§ 937. Tax—Interest—Sinking Fund.

The school trustees of each district shall ascertain and levy annually, the tax necessary to pay the interest when it becomes due and a sinking fund to redeem the bonds at their maturity; and said tax shall become a lien upon the property in said school district, and be collected in the same manner as other taxes for school purposes. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 287.]

§ 938. Same—Redemption of Bonds.

The county commissioners, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year, and such portion of the principal as is to become due during such years and in any event must be high enough to raise annually for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon, and during the balance of the term, high enough to pay such annual interest, and to pay annually, a portion of the principal of said bonds, equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds have to run and all moneys so levied, when collected, must be paid into the county treasury to the credit of such district, kept in a separate fund and be used for the payment of principal and interest on said bonds, and for no other purpose.

1. Provided, that the board may with the surplus of such sinking fund, when the same shall be one thousand (\$1,000) dollars or more, purchase any of the outstanding bonds issued by the board. Such purchase shall be made at the lowest price such bonds can be purchased at, but at no more than par value of such bonds; and whenever there shall be such a surplus of sinking fund amounting to the sum of one thousand (\$1,000) dollars, the board shall purchase therewith like bonds, on the same terms and conditions as hereinbefore specified.

2. If for any reason such bonds cannot be purchased as hereinbefore specified, such sinking fund shall be invested by the treasurer under the direction of the board of trustees, at such times as the board shall direct, in interest-bearing bonds of the United States or of the state of Montana, which shall be purchased at the lowest market price. Interest accruing upon such bonds shall be invested in the same manner and for the same purpose as a sinking fund. Such bonds shall be held by the treasurer until the principal of any bonds issued by the board of trustees shall become due, and shall be sold at the highest market price, and the proceeds applied to the payment of bonds; provided, further, that if at any time the board shall deem it best, it shall be lawful to sell such bonds for the purpose of purchasing the bonds issued by such board; but all such sales shall be at the highest market price, and the bonds of the board purchased with the proceeds of such sale shall be purchased at the lowest price they can be obtained for, and not above the par value of such bonds; provided, further, that the bonds first maturing shall be purchased, if they can be purchased, on terms as favorable to the board as others offered for sale to the said board. All bonds of the said board purchased under the authority hereby given, or paid by the board, shall be forthwith cancelled as provided in the next succeeding section. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 287.]

§ 939. Redemption—Notice to Bondholder.

When the sum in said sinking fund shall equal or exceed the amount of any bond then due, the county treasurer shall give notice to each bondholder, if known to him and shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the numbers thereof, and preference shall be given to the oldest issue; and if at the expiration of the said thirty days the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds shall be so purchased or redeemed the county treasurer shall cancel all bonds so purchased and redeem by writing across the face of such bond or bonds, in red ink, the word "Redeemed" and the date of such redemption; provided, that, whenever in the judgment of the board of school trustees and prior to the redemption of said bonds said board shall deem it advisable and for the best interest of the school district to invest said sinking fund or any part thereof, the board may by an order entered upon their minutes direct and require the county treasurer to invest said sinking fund or any part thereof in state or county bonds or warrants until such redeemable period. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 289.]

§ 940. Duty of County Treasurer.

The county treasurer shall pay out of any moneys belonging to the school district the interest upon any bonds issued under this chapter by such district when the same shall become due, upon the presentation at his office of the proper coupon which shall show the amount due, and the number of the bond to which it belonged; and all coupons so paid shall be reported to the school trustees at their first meeting thereafter. But the board of trustees of any school district issuing bonds may, by resolution, direct that said bonds and the interest thereon shall be payable in any city in the United States, and then such bonds and coupons shall be made payable at such bank in said city as shall be designated by the county treasurer at the time of issue; and all bonds and coupons so paid must be returned to the county treasurer and by him canceled and exhibited to the county commissioners at their first meeting thereafter. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 289.]

§ 941. Printing of Bonds.

The school trustees of any district shall cause to be printed or lithographed, at the lowest rates, suitable bonds, with the coupons attached, when the same shall become necessary, and pay therefor out of any moneys in the county treasury to the credit of said school district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 289.]

§ 942. Penalty.

If any of the school trustees of any district shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for by this chapter, they shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the State Penitentiary for a term of not less than one year nor more than ten years. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 289.]

§ 943. Repayment of Money Borrowed for Maintenance of Schools.

That whenever, before the passage of this act, the taxes levied and collected in any school district upon the taxable property of said district, for the necessary maintenance of said schools, have been insufficient for the necessary maintenance of said schools, and for that reason the trustees of said school district have been compelled to borrow money for the necessary maintenance of said schools, in order to prevent the closing of the same for a portion of the regular school year of said district, and have borrowed money for the necessary maintenance of said schools, and such moneys so borrowed cannot be repaid out of the total amount of taxes that may be raised by maximum levy for school purposes in such district, without using the funds of the district needed to pay the necessary current expenses for the maintenance of the schools therein, and thereby necessitating the closing of such schools for the whole or a portion of the regular current school year of such district for one or more years, then the said trustees shall be, and are hereby empowered to raise money to repay, and to repay such loans, with interest thereon from the date thereof until paid at the rate of six per cent per annum, by levying a tax therefor upon all taxable property in said district in the manner provided in the following sections. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 290.]

§ 944. Special Levy to Repay Moneys Borrowed.

That if the trustees of any school district under the circumstances mentioned in section 2025 [§ 953 herein] of this chapter shall determine to repay the moneys borrowed and used for the purpose mentioned in said section 2025, they shall ascertain the amount to be levied by finding the amount of the principal, of such loans and interest at six per cent per annum from the date thereof to December 15th, of the year in which such levy shall be made, that being the time when the tax will properly be collected, and shall, on or before the day when the county commissioners are required by law to make the annual tax levy, make and file with the county clerk of the county in which such school district shall be situated, their certificate, which shall be signed by a majority of such trustees, setting forth therein the amount to be raised as aforesaid, and requesting the county commissioners to levy the amount named in said certificate as a special tax upon all taxable property in said school district. The valuation of the property in said district as the same appears upon the assessment-roll of said county for the year for which the levy shall be made, shall be the basis for the assessment of such tax. It shall be the duty of the county commissioners at the time the annual tax levy is made to levy the sum named in said certificate as a special tax upon all of the taxable property in said district, and the duty of the county clerk to spread said tax upon the said assessment-roll against all of said property in the same manner as other taxes are spread upon said roll, and said tax being so assessed shall become a lien upon said property and be collected in the same manner as other taxes for school purposes are collected. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 290.]

§ 945. Disposition of Funds Collected.

That when the tax mentioned in the preceding sections has been collected, or any part thereof, the county treasurer shall place the same to the credit of said school district in a fund separate from all other funds,

of said district and the moneys in such fund shall be forthwith paid out by the trustee to the persons and corporations to whom the same are payable, and until the debt for the payment of which such moneys were raised have been paid, no part of such funds shall be used for any other purpose. If from failure to collect the entire amount of such tax, or from any other cause, there shall not be moneys sufficient in said fund to pay the amount of principal and interest of the sum borrowed, the trustees shall pay the amount of such deficiency from the general fund to the credit of said district, and if after paying all of the debts payable out of such special fund, a balance shall remain therein, such balance shall be transferred to the general fund of said district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 291.]

§ 946. Trustees may Issue Bonds.

If the trustees of any school district mentioned in this act shall determine that it would not be for the best interest of said district to raise in any one year the moneys mentioned in section 2027 [§ 945 herein] of this chapter, by levying and collecting a tax therefor as in the preceding sections provided, they shall nevertheless be authorized and empowered to raise such moneys by issuing and selling the bonds of said district in an amount sufficient to repay, and to repay, such moneys with interest thereon at six per cent per annum. If the said trustees shall determine to issue the bonds of said district for the purpose aforesaid, they shall ascertain the amount of said bonds by finding the amount of principal and interest of the loans to be repaid at six per cent per annum from the date thereof until the time when said bonds will probably be sold as hereinafter provided. They shall then issue the bonds of such district to the amount to be ascertained which bonds shall draw interest at a rate not to exceed six per cent per annum payable either annually or semi-annually as the trustees shall determine, and each of said bonds shall be for the sum of one hundred dollars or multiples thereof and shall run for such length of time as the said trustees shall determine, not exceeding a period of ten years from the date thereof; said bonds shall be in such form as the board of trustees may direct, and shall bear the signature of the chairman of the board of trustees, and shall be signed by the clerk as clerk of said school district, and the coupons attached to said bonds shall be signed by said chairman and said clerk; provided that lithographic or engraved facsimiles of the signature of the chairman and clerk may be affixed to coupons only when so recited in the bond, and each bond so issued shall be registered by the county treasurer in a book provided for that purpose, which shall show the number and amount of each bond, and the person to whom the same is issued or sold, and said bonds shall be sold and the proceeds thereof deposited with the county treasurer, in the manner provided by the provisions of section 2028 [§ 946 herein] of this chapter, and paid out by the trustees to the persons and corporations to whom the loans for the payment of which such bonds were issued are payable. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 291.]

§ 947. General Laws Applicable.

All of the powers conferred and duties enjoined upon school trustees and county commissioners by sections 2019, 2020, 2021, 2022, 2023, of this chapter for raising money to pay the interest on, and to provide, and for the care and management of, a sinking fund for the redemption and pay-

ment of bonds issued by school districts under the provisions of existing laws are hereby conferred and enjoined upon school trustees and county commissioners respectively with respect to all bonds issued under the provisions of this chapter. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 292.]

§ 948. Refunding Bonds.

The school trustees of any school district of the state of Montana, shall have, and are hereby given in addition to the power already conferred on them, authority to issue on the credit of their respective districts, coupon bonds (and sell or dispose of the same), for the purpose of providing for the necessary funds to pay maturing, redeemable, or optional bonds, under the following conditions, to wit:

1. When there is not sufficient money to the credit of the school district applicable to pay any of said bonds.

2. When in the judgment of the school trustees to levy and collect a special tax for the purpose of paying any of said bonds, would be a hardship and a burden to the school district.

3. All bonds issued under the provisions of this section of this act, shall bear upon their face the words "Refunding School Bonds" and shall also recite in the body of the bond that "this bond is issued for the purpose of providing funds to pay maturing and outstanding bonds."

4. Said bonds shall bear interest at a rate not to exceed six per cent per annum (and interest may be payable semi-annually), and payable and redeemable within a period not exceeding twenty years from the date of issue; provided, said bonds shall not exceed in amount the face value of the bond (and any accrued interest thereon), which they are issued to replace.

5. The trustees shall fix the denominations, terms, rate and form of said bonds not inconsistent with the requirements hereinbefore set forth; and may issue, dispose of or sell such bonds at any time deemed necessary and expedient to enhance, preserve and maintain the credit of their respective districts.

6. Said bonds, when offered for sale, shall be advertised for sale in not less than one newspaper of general circulation, published in the state of Montana, for a period of not less than four weeks preceding the date fixed for sale of said bonds; said advertisement shall briefly describe the bonds, stating the time when, and the place where said sale shall take place; provided that said bonds shall not be sold at less than their par value, and the trustees are authorized to reject any bids made, and sell said bonds at private sale, or exchange the same for outstanding bonds, if they deem it for the best interests of the districts so to do, and it shall not be necessary to hold any election or submit the matter of the issuance of the bonds authorized by this section of this chapter, to the electors of the school district.

7. Said bonds and coupons (attached) shall be signed by the chairman of the board of trustees and the school clerk of the district, provided, a lithographed or engraved facsimile of the signatures of the chairman and the clerk may be affixed to the coupons, only when so recited in the bonds, and the corporate seal of the school district shall be affixed to each bond.

8. Each bond so issued shall be registered by the county treasurer of the county wherein such school district is located, in a book provided for

the purpose, which shall show the date, number, term, and amount of each bond, and the person or persons to whom the bonds are issued and sold. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 292.]

§ 949. Disposal of Proceeds of Bonds.

All moneys arising from the sale of said bonds shall be paid forthwith into the treasury of the county in which said school district is located, and shall be immediately available to apply for the purpose authorized and no other purpose. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 294.]

§ 950. District Responsible on Bonds.

The faith of each school district is solemnly pledged for the payment of the interest and redemption of the principal of the bonds which shall be issued under this chapter. And for the purpose of enforcing the provisions of this chapter, each school district shall be a body corporate, which may sue and be sued by, or in the name of the board of school trustees. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 294.]

§ 951. Must Levy Taxes for Interest, etc.

The school trustees of each district shall ascertain the amount and levy annually, a tax necessary to pay the interest, when it becomes due, and provide a sinking fund to redeem the bonds at their maturity; and said tax shall become a lien upon the property in said school district and be collected in the same manner as other taxes for school purposes. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 294.]

§ 952. Redemption of Bonds.

When the sum in said sinking fund shall equal or exceed the amount of any bond then due, the county treasurer shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the number thereof, and the bonds bearing the lowest number shall be redeemed first in their order; and provided, that such redemption shall be made at some regular interest period as set forth in the bond; and if at the expiration of the said thirty days the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bond or bonds shall be so purchased or redeemed, the county treasurer shall cancel all bonds so purchased and redeemed, by writing or stamping across the face of such bond or bonds, in ink, the words "Redeemed and Canceled," and the date of such redemption. And the bonds paid shall be exhibited to the board of county commissioners at their first meeting thereafter. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 294.]

§ 953. Payment of Interest.

The county treasurer shall pay out on any moneys belonging to the school district, the interest upon any bonds issued by authority of this chapter, by such district, when the same shall become due, upon the presentation at his office, of the proper coupon, which shall show the amount due, and the number of the bond to which it belongs; and all coupons so paid shall be canceled and exhibited to the board of county commissioners

at their first meeting thereafter. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 295.]

§ 954. Printing of Bonds.

The school trustees of any school district shall cause to be printed or lithographed, at the lowest rate, suitable bonds, with the coupons attached, when the same shall become necessary, and pay therefor out of any moneys in the county treasury to the credit of said school district. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 295.]

§ 955. Felony—Penalty.

If any of the school trustees of any district shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for in this chapter, they shall be deemed guilty of a felony and upon conviction thereof, shall be punished by imprisonment in the State Penitentiary for a term of not less than one year, nor more than ten years. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 295.]

§ 956. Repayment of Loans.

Whenever heretofore money has been loaned or advanced to the board of school trustees of any district, for the erection of a schoolhouse or schoolhouses therein, by any person or corporation, in reliance upon the proceeds of the sales of bonds for the repayment of the same, the issuance of which bonds has been voted for by a majority of the electors of such district, voting at an election held for the purpose of authorizing the issuance of the same for the erection of a schoolhouse or schoolhouses, which said money has been used by such board of school trustees in the erection of a schoolhouse or schoolhouses in such district, but which bonds when issued have been adjudged and held to be void or invalid by the supreme court of the state, the money so loaned or advanced may be repaid, together with the interest thereon covering the period for which interest has not been paid, at the rate specified in said bonds so held to be void; said payment to be made by the board of school trustees to the person or corporation who or which had loaned or advanced the same, from the proceeds of the sale of any bonds thereafter issued for the purpose of building one or more schoolhouses in said district, or for any other school purpose. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 295.]

CHAPTER XXI.

COUNTY HIGH SCHOOLS.

§ 957. Any County may Establish High Schools.

Any county in the state may establish a high school on the conditions and in the manner hereinafter prescribed, for the purpose of affording better educational facilities for pupils more advanced than those attending the elementary schools. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 296.]

The initiative in raising funds for the maintenance of high schools and the erection of buildings for them lies wholly with the board of high school trustees. *Panchot v. Leet*, 50 Mont. 316, 146 Pac. 927.

§ 958. Petition for Establishment and Location.

Whenever one hundred freeholders in any county shall petition the board of county commissioners, requesting that a high school be established

in their county, the county clerk shall give twenty days' notice, by publication in the official paper of the county, that such petition has been filed, and that any village, town or city may become a candidate for the location of said high school upon petition of not less than fifty freeholders of said village, town or city, requesting that said place be named as the candidate for the location of said high school. All nominations of places for the location of said school shall be filed with the board of county commissioners within thirty days from the date of the first publication of said notice. Any number of places may be candidates for the location of said school but no freeholder shall append his name to more than one petition. If such petition is filed at any time when the board of county commissioners is not in session, the county clerk shall notify the commissioners thereof, and a special meeting shall be held to call the necessary election herein provided for. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 296.]

§ 959. Election—Voting.

At the expiration of thirty days from the date of the first publication of said notice, the county commissioners shall call an election and appoint precinct judges and clerks. Said election shall be conducted in accordance with the general election laws of the state. The county clerk shall give twenty days' notice of such election by publication in the official paper of the county that the question of establishing a high school in said county, and the location thereof, will be submitted to the qualified electors of said county at a designated time. The notice shall distinctly specify the places which are candidates in the forthcoming election. The qualified electors shall vote by ballot, for or against the establishment of a county high school, and on separate ballots with the names of the place or places that are candidates for the location of said school written or printed thereon, vote for not more than one of the places named upon said ballot as a candidate for the location of said school. The ballots shall be substantially in the following form:

Ballot No. 1. For a County High School. Against a County High School.

Ballot No. 2. Helena. Marysville.

An elector desiring to vote for the establishment of a high school, shall do so by placing an "X" before the clause; "For a County High School," which shall be a vote in favor of establishing a county high school. An elector desiring to vote against the establishment of a high school, shall do so by placing an "X" before the clause: "Against a County High School." An elector desiring to vote for the location of a county high school at a certain place, shall do so by placing an "X" before the name of the place desired for the location of such school. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 297.]

§ 960. Canvass of Returns.

After the election, the ballots on said question shall be canvassed in the manner provided for general county elections, and, if the vote in favor

of establishing a county high school shall be a majority of all votes cast upon said proposition, the board of county commissioners shall proceed to canvass the vote for the different candidates for the location of said school, and the village, town or city having the largest number of votes for the location of said school, provided said number of votes be a majority of all votes cast in favor of the measure, shall be declared to be the place for the location thereof. If the results in favor of establishing such high school, and any candidate for its location has a majority, the board of county commissioners, by an order duly entered on their minutes, shall so declare this fact, and the board shall immediately thereafter appoint six persons, residents and taxpayers of the county not less than three nor more than four of whom shall be residents of the village, town or city, where the school is located, who shall, with the county superintendent of schools, constitute a board of trustees for said school.

In case of a tie vote between two or more of the candidates having the highest number of votes for the location of said school, the county commissioners shall immediately call another election in the manner provided by law for general county elections, at which the only question to be submitted shall be the location of said school and only the names of those candidates so tied shall appear upon the ballot. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 298.]

§ 961. Board of Trustees.

1. *Composition of.*—The board of trustees shall consist of seven members of which the county superintendent shall be a member, and the remaining six members shall be appointed by the county commissioners.

2. *Term.*—The term of office of trustees, other than the county superintendent, except of those especially hereinafter provided for, shall be three years and until their successors are appointed and qualified.

3. *Appointment.*—The county commissioners shall appoint at their regular meeting in March, 1913, three trustees, two for a three year term, and one for a two year term; in March, 1914, they shall appoint two trustees for a three year term and one trustee for a one year term, and annually thereafter at their quarterly meeting in March they shall appoint two trustees for [a] three year term. Of the trustees appointed not less than three nor more than four shall be residents of the village, town or city in which the high school is located.

4. *Vacancies.*—Whenever any vacancy occurs in said board of trustees from any cause, the secretary of the board shall immediately certify such vacancy to the board of county commissioners.

5. *Meeting—Quorum.*—The county high school boards shall hold four regular meetings per year, on the third Saturday of April, July, October and January, and such special meetings not to exceed two in any one month, as they may deem necessary. The provision of the general school law as to notice, time and place of meetings shall govern all county high school boards.

A majority of said board shall constitute a quorum for the transaction of all business.

6. *Officers.*—At the regular April meeting in each year the trustees shall choose from their number, a president, vice-president, and secretary,

who shall hold office for one year or until their successors have been appointed and qualified, and said trustees shall have authority to make all necessary rules for their government, not inconsistent with the law. The county treasurer of the county shall be the treasurer of the board and the custodian of all funds available for school purposes.

7. *Powers and Duties.*—(a) To keep a record of all the official acts done by said board, and to keep a full record of all warrants issued against moneys belonging to said county high school. Payments of money can only be made upon warrants drawn against said funds belonging to said high school, and each warrant so drawn must specify, upon its face the purpose for which it is drawn.

(b) To proceed as soon as practicable after their appointment and qualification, to select at the place designated as the location for the county high school, the best site that can be obtained, and the title thereto, upon securing said site by purchase or otherwise, shall vest in the county; the trustees shall then proceed to make purchase of material and to let such contracts for necessary school buildings as they may deem proper. They shall not, however, make any purchase or enter into any contract, whereby obligations are assumed in excess of the amount of funds on hand or available through the levy of taxes for the current year, or the issuance of bonds.

(c) To lease at their discretion suitable buildings for the use of the high school while the new buildings are in process of erection, or to contract with the trustees of the local school district, or any other parties, for the use of suitable buildings for high school purposes for such time as may be deemed best for the interests of the county.

(d) To employ for a period not to exceed three years some suitable person to take charge of said school who shall possess such qualifications as are now required to be possessed by a city superintendent of schools; except that said principal shall not be required to possess more than three years of experience in teaching; to furnish such assistant teachers as they may deem necessary, and to designate the salaries which shall be paid to said principal and assistant teachers; provided, that such teachers shall be required to have the qualifications required of a teacher to hold a position in a district high school and also to hold a valid Montana certificate.

(e) To adopt on the recommendation of the principal such courses of study as will properly fit the student attending said high school for admission to the collegiate class of any of the state educational institutions, and such course of study shall contain the work now provided for accredited high schools by the state board of education.

(f) To admit pupils without tuition under such rules and regulations as they may deem proper in regard to age and grade of attainments essential to entitle pupils to admission to such school; provided, that no person shall be admitted to such high school who shall not have satisfactorily completed the work of the elementary grades. All eligible pupils in the county are entitled to attend the county high school and it shall be the duty of the board to provide accommodations for such pupils.

(g) To admit pupils from other counties, when there is room, upon the payment of such tuition as the board of trustees may prescribe; but at no time shall such pupils continue in such school to the exclusion of pupils residing in the county in which such school is located. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 298.]

§ 962. Compensation of Trustees.

The trustees who do not reside at the place where said high school is established are entitled to mileage in attending the meetings of the board. The trustees of said high school shall serve without compensation, but may pay their secretary such reasonable compensation as may be determined and the board shall make such reports, from time to time, as the county superintendent of schools, or the state superintendent of public instruction may require. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 301.]

§ 963. Principal may Make Rules.

The principal of any such high school with the approval of the board of trustees shall make such rules and regulations as he may deem proper in regard to the studies, conduct and government of the pupils under his charge; and if any such pupils will not conform to, nor obey, the rules of the school, they may be suspended by the principal or expelled therefrom by the board of trustees. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 301.]

§ 964. Diploma to Admit to State Collegiate Institutions.

Upon the presentation of a certificate of graduation from any such county high school, within eighteen months from the date of the same, to any state institution of learning, the person presenting the same may be admitted without further examination to said institution of learning. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 301.]

§ 965. Tax Levy.

At the regular April meeting or at some succeeding meeting, called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for payment of teachers' wages, and for payment of contingent expenses and they shall present to the board of county commissioners a certified estimate of the rate of tax required to raise the amount desired for such purposes, and the board of county commissioners must levy such tax as other county taxes are levied. But in no case shall the tax for such purpose exceed in one year the amount of five mills on the dollar on the taxable property of the county. [Amendment approved March 8, 1915; Laws 1915, c. 115, p. 255.]

§ 966. Submission to Electors of Question of Bond Issue.

The secretary of the board of county high school trustees, whenever a majority of the board shall so decide, shall certify to the board of county commissioners that they have decided to submit to the electors of the county, the question whether the county bonds shall issue for the purpose of the erection or purchase of a building or buildings for high school purposes and the equipment thereof, or for the erection and equipment of a dormitory or dormitories, or gymnasium, and for a suitable site or sites therefor, and shall include in such certificate the amount of such bonds, which amount shall not exceed the sum of two hundred fifty thousand (\$250,000) dollars, in any one county of the first and second class, and one hundred fifty thousand (\$150,000) dollars, in counties of the third class, and in all other counties shall not exceed the sum of one hundred thousand (\$100,000) dollars in any one county. Such bonds may run for a term of twenty years, or less, but no longer; provided, that any such issue of bonds

shall not increase the indebtedness of any county beyond the maximum limit fixed by the state Constitution.

That as soon as practicable after receiving such certificate the board of county commissioners shall proceed to submit the question of issuing said bonds to the qualified electors of the county in the manner provided by law for the issuance of other county bonds. If such bonds are issued the county commissioners, at the time of making the levy of taxes for county purposes each year, must levy a tax for that year upon the taxable property in the county for the interest and redemption of said bonds, and such taxes must not be less than sufficient to pay the interest on said bonds for that year and such proportion of the principal as is to become due during the year, and in any event must be high enough to raise annually, for the first half of the term, a sufficient sum to pay the interest thereon and during the balance of the term, high enough to pay said annual interest and to pay annually a portion of the principal of said bond, equal to the sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds have to run, and all moneys so levied, when collected, must be paid into the county treasury to the credit of the county high school, kept in a separate fund and to be used for the payment of principal and interest on said bonds, and for no other purpose; provided, however, that the accumulated money may be invested as is provided for the investment of money collected for the payment of school district bonds. Said tax shall be levied and collected in the same manner as other county taxes.

In any county wherein there is now maintained a district high school, in which a county high school is hereafter created, the bonds to be issued for the county high school under the provisions of this section shall constitute an indebtedness only against so much of the said county as is not included in the district maintaining said high school, and the question of the issuance of said bonds shall be submitted to the electors only who reside outside of such district. The limitations on the indebtedness to be created by the issuance of bonds in such cases and the method of levy, assessment and collection of taxes for the payment of bonds so issued, hereinabove set forth, shall apply only to so much of the said county as is not included in the school district maintaining such district high school. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 301.]

§ 967. Payment of Bonds.

Said bonds shall be paid, principal and interest, in the manner provided for the payment of other county bonds. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 303.]

§ 968. Assessment for Maintenance.

In case bonds are issued, the trustees in making estimates for the maintenance of high school, shall not include estimates for building or other purposes for which the said bonds are issued. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 303.]

§ 969. District High Schools.

1. In any county where a county high school has been established, any school district which maintains high school classes duly accredited by the state superintendent of public instruction shall be entitled on such accreditation

ing to share in all county high school moneys levied and collected for maintenance, and the money derived from such levy shall be apportioned by the county superintendent of schools to the several accredited high schools in the county according to the average daily attendance in accredited high school classes for the school year next preceding, as determined by the said county superintendent.

2. In any county where no county high school has been established, but in which one or more districts maintain high school classes duly accredited by the state superintendent of public instruction, a special tax levy not exceeding three mills on each dollar of taxable property in the district may be made for the benefit of such high schools. When such levy is to be made, the chairman of the board of trustees of each school district maintaining a high school shall, on or before the first day of August in each year, severally recommend and advise the board of county commissioners as to how many mills the tax levy should be on each dollar of taxable property, and the board of county commissioners shall thereupon fix the levy not exceeding three mills according to their own judgment at a rate which will raise sufficient money to meet the reasonable expenditures of such accredited high schools for maintenance during the ensuing school year, and the money derived from such levy shall be apportioned by the county superintendent of schools to the several districts, in which such tax is levied, according to the average daily attendance in accredited high school classes for the school year next preceding, as determined by the said county superintendent.

3. Attendance at any high school to whose support such money is apportioned in accordance with the provisions of this act shall be free to all eligible pupils residing within the district in the county in which such accredited high school is situated. [Amendment approved March 8, 1915; Laws 1915, c. 119, p. 261.]

§ 970. Prior Acts Validated.

All acts and things of any kind whatever, done by any board of county free high school trustees, or by any board of county commissioners, of this state prior to the passage of this act, under the provision of the act of March 3, 1899, for the establishment of county free high schools, or under the act of March 14, 1901, or the act of March 5, 1899, shall be and are hereby ratified and declared to be valid and of full force and effect, [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 304.]

§ 971. Same.

That all acts heretofore done by any board of county commissioners in this state in connection with the submission to the electors of their county of the question of establishing and locating a county free high school, and upon which acts such question was in fact submitted to the electors of such county and a majority of all votes cast at such election was in favor of the establishment and location of such high school and so found and declared by the board of county commissioners, shall be, and are hereby ratified and declared to be valid and of full force and effect. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 304.]

§ 972. Bond Legalized.

That all bonds issued or authorized to be issued, at any time prior to the passage of this act, by the board of trustees of any county free high

school in this state, where the question of the issuance of the same was first submitted by said trustees to the electors of the county and a majority of all votes cast at such election were in favor of said bond issue, and so found and declared by said board of trustees are hereby ratified and declared to be valid and legal obligations and of full force and effect. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 304.]

CHAPTER XXII.

MISCELLANEOUS.

§ 973. Gender.

Whenever the word "he" or "his" occurs in this title, referring either to the members of the board of trustees, county superintendent, teachers, school officers or children, it shall be understood to mean also "she" or "her." [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 304.]

§ 974. Fines and Penalties.

All fines and penalties, not otherwise provided for in this title, shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 305.]

§ 975. Printing and Binding.

All printing and binding required under this title shall be executed in the form and manner, and at a price not exceeding other county printing, and shall be paid in like manner out of the general school fund. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 305.]

§ 976. School Officers not to Act as Agents.

Neither the superintendent of public instruction, nor any person in his office, nor any county superintendent, nor school district officer, nor any officer or teacher connected with any public school, shall act as agent or solicitor for the sale of any school books, maps, charts, school library books, school furniture or apparatus, or furnish any assistance to, or receive any reward therefor, from any author, publisher, bookseller or dealer, doing the same. Every person violating this section shall be deemed guilty of a misdemeanor and be liable to a fine of not less than fifty nor more than two hundred dollars for each offense, and shall be liable to removal from office therefor. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 305.]

§ 977. Purchase of Charts, Maps and Apparatus.

No warrants issued by board of trustees in districts of the third class in payment for charts, maps or apparatus shall be paid by the county treasurer until such warrant has been countersigned by the county superintendent. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 305.]

§ 978. Oath of Office.

Any person elected or appointed to any office mentioned in this title, shall, before entering upon the discharge of the duties thereof, take the oath of office. In case such officer has a written appointment or commission, his oath shall be indorsed thereon; otherwise it may be taken orally; in

either case it may be sworn to before any officer authorized to administer all oaths relative to school business appertaining to their respective offices, without charge or fee. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 305.]

§ 979. Duty of County Attorney.

The county attorney shall be the legal adviser of the county superintendent, and all school trustees, and shall prosecute and defend all suits to which a district may be a party. [Amendment approved March 12, 1913; Laws 1913, c. 76, p. 305.]

§ 980. Penalties—Repealing Clause.

Any person who shall violate any provisions of this title shall be deemed guilty of a misdemeanor (when not otherwise provided in this title) and upon a conviction thereof shall be fined in a sum not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than five days nor more than thirty days, or by both such fine and imprisonment. The following sections of the Revised Codes of the state of Montana, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, and 1044, and chapters 11, 12, [22], 27, 28, 31, 32, 35, 73, 98, of the Laws of 1909, and chapters 16, 24, 40, 41, 42, 71, 82, 102, and 131 of the Laws of 1911, and all acts heretofore passed amendatory thereof, are hereby expressly repealed.

All acts and parts of acts in conflict herewith are hereby repealed.

This act [§§ 642-653, and §§ 791-980 herein] shall take effect and be in full force and effect from and after its passage and approval. [Approved March 12, 1913; Laws 1913, c. 76, p. 306.]

§§ 981 to 1021. [Repealed.]

By act approved March 12, 1913; Laws 1913, c. 76, p. 306.

§ 1022. Arbor or Tree-planting Day.

The second Tuesday of May in each year shall be known throughout the state of Montana as "Arbor Day." [Amendment approved March 4, 1909; Laws 1909, p. 113.]

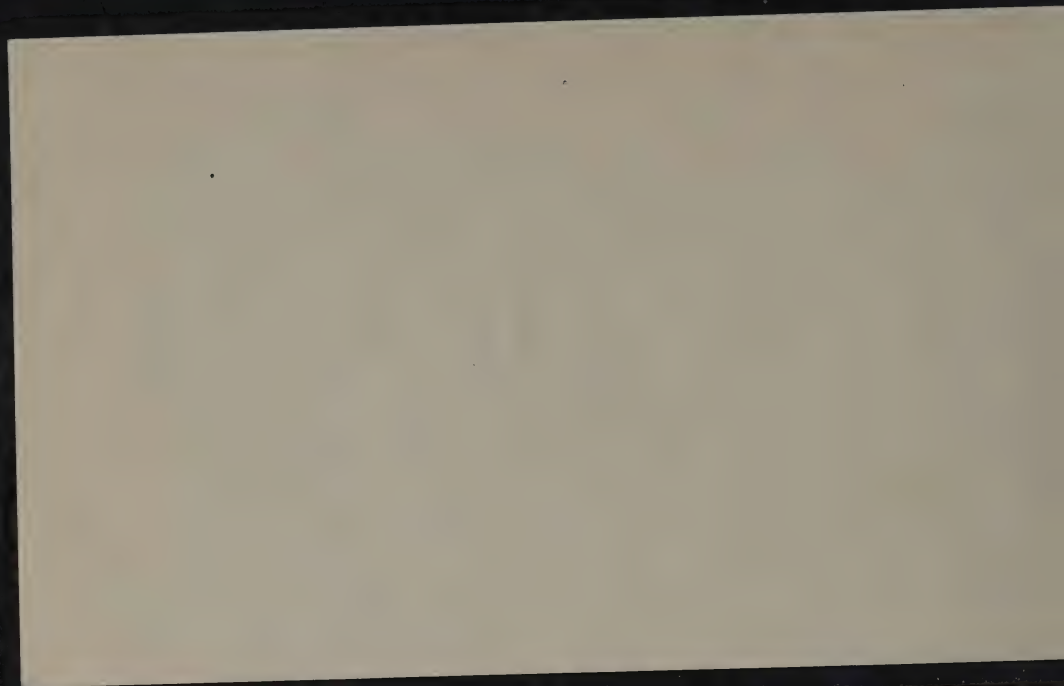
§§ 1023-1044. [Repealed.]

By act approved March 12, 1913; Laws 1913, c. 76, p. 306.

TO BE TIPPED IN AT THE TOP OF PAGE 163 OF VOLUME 3 OF
THE REVISED CODES OF MONTANA.

Erratum.

The Military Code, printed as sections 1045 to 1110e herein, although it was adopted by the legislature and approved by the governor (Laws 1911, 145, p. 432), was rejected by the people when referred to them. It therefore never became a law, and sections 1045 to 1110 of the Revised Codes of 1907, which it purports to repeal, were not affected by it and they still remain the law (In re McDonald, 49 Mont. 454, 143 Pac. 947). The opinion of the supreme court in the McDonald case does not in terms refer to the Military Code, or chapter 145 of the Laws of 1911, but to the "Donohue Bill"; and the fact that the Military Code is identical with the Donohue Bill escaped attention in the completion of this 1915 Supplement until the volume had gone to the press.



MILITIA AND NATIONAL GUARD.

§ 1045. Military Code of State.

(Section 1.) This act, together with subsequent acts amendatory thereof, and all future acts relating to the militia and National Guard of Montana, shall be known as the Military Code of the state of Montana. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

The passage of the Donohue bill by the legislature, which was subsequently defeated on referendum, did not obliterate the state militia; it was necessary for that bill to have the approval of the people before it became a law, and this it never had. In re McDonald; In re Gillis, 49 Mont. 454, 477, 143 Pac. 947.

§ 1045a. Who Subject to Military Duty.

(Section 2.) Persons subject to military duty: Every able-bodied male citizen, and every able-bodied male of foreign birth, who has declared his intention to become a citizen, resident within this state, who is more than eighteen or less than forty-five years of age, shall be subject to military duty, unless specifically exempted therefrom by the laws of the United States or this state. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1046. Persons Exempt from Military Duty.

(Section 3.) The following persons are exempt from military duty in this state:

1. Civil and military officers of the United States.
2. State and county civil officers.
3. Members of any regularly organized fire or police department in any city or town.
4. All persons exempt from military duty by the laws of the United States.
5. All idiots, lunatics and persons under sentence for having committed an infamous crime: Provided, that no person who shall have voluntarily enlisted in the National Guard of Montana shall be entitled to exemption under this section during the time of his enlistment. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1047. Assessor to Enroll Able-bodied Males.

(Section 4.) The county assessor of each county in the state, when he prepares his assessment-roll each year must at the same time enroll every able-bodied male inhabitant of said county not under sentence for an infamous crime, who is more than eighteen and less than forty-five years of age. On such enrollment and opposite the name of each person who is exempt from duty under section 2, or who is serving in the active militia, or who is unable by reason of physical disability to perform military duty, the assessors shall write the word "exempt," and state in each case the cause of exemption,

The enrollment shall be made in triplicate and shall state the name, residence, age, occupation and previous or existing military or naval service of each person enrolled.

When complete the rolls shall be verified under oath by the enrolling officer, who shall immediately thereupon file one copy with the adjutant general of the state and another with the county auditor, retaining the third copy for himself. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1048. Claiming Exemptions.

(Section 5.) Any person claiming exemption shall satisfy the assessor of his right thereto, and in case of doubt the burden of the proofs shall be upon the person claiming exemption, and the assessor shall require him to submit to examination on oath and may administer such oath. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1049. Refusal to Give Information or Giving of False Information Concerning Enrollment.

(Section 6.) Any person knowingly and willfully refusing information or giving false information to an assessor or other authorized person making the enrollment, respecting the name, age, residence, occupation, military service, physical or mental condition, or other proper subject of inquiry, of himself or of any person within his knowledge liable to be enrolled, shall for each concealment, refusal or giving of false information be guilty of a misdemeanor. The assessor, or other officer, making the enrollment shall within ten days after the date of delivering the military roll to the county auditor report all persons violating this section to the adjutant-general. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1050. Refusal of Assessor to Perform Duties or Making of False Entries, etc.

(Section 7.) Any assessor neglecting or refusing faithfully to perform the duties required of him by this act, or making any false entry upon said rolls, or committing any other fraud therein, shall be guilty of a misdemeanor. Upon the failure of any assessor to make the enrollment of the militia as required by law, the Governor may appoint some person to make it at the expense of the county, and the person so appointed shall have all the powers and be subject to the same duties as are prescribed, in the case of assessors. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1051. Active and the Reserve Militia.

(Section 8.) The militia shall be divided into two classes, the active militia and the reserve militia. The active militia of this state shall consist of the regularly enlisted, organized, and uniformed military forces, who have heretofore participated or shall hereafter participate in the apportionment of the annual appropriation provided by section 1661 of the Revised Statutes of the United States, as amended, and shall be known as the National Guard of Montana. The reserve militia shall consist of all those liable to service in the militia, but not serving in the active militia of the state. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1052. Governor is Commander-in-chief.

(Section 9.) The Governor is the commander-in-chief of the military forces of the state, except of such portions as may be at times in the service of the United States. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1053. Governor's Staff—Adjutant-general.

(Section 10.) The staff of the commander-in-chief shall consist of the adjutant-general, who shall be ex-officio chief of staff, and such number

of commissioned officers of the National Guard on the active list, or the retired list, not exceeding five, as he may see fit to appoint as members of his staff; provided, that no officer shall be appointed from the retired list who shall have had less than five years of service in the active militia. Immediately upon their appointment, such officers shall be detailed to serve as members of the Governor's staff during his pleasure, but such details shall not relieve them, or either of them, from performing the duties of their respective offices. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1054. When Governor has Power to Order Militia into Active Service.

(Section 11.) In case of insurrection, invasion, tumult, riot, mob, or body of men acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break or resist the laws of this state, or the United States, or of imminent danger thereof, or in the event of public disaster resulting from flood, conflagration, or tempest, the Governor shall have the power to order into active service of the state any part of the militia that he may deem proper. And whenever the militia of this state or part thereof is called forth under the Constitution and laws of the United States, the Governor shall unless the order for the call specifies otherwise, order out for service the active militia or such part thereof as may be required; and if the number available be insufficient he shall order out the reserve militia or such part as may be necessary.

As soon as the active militia of the state of Montana or any part thereof shall have entered the service of the United States, it shall be the duty of the Governor to organize and muster into the service of the state of Montana the same number of companies, battalions or regiments as have been ordered into the federal service. The organizations so mustered into the service of the state of Montana shall be known as the National Guard reserve and whenever one regiment or more of the National Guard of Montana shall have been mobilized for the federal service at least one battalion of the National Guard of Montana not in the service of the United States or at least one battalion of the National Guard reserve shall be designated as a depot battalion and shall be used for the purpose of recruiting and training men for service with those organizations theretofore ordered into the federal service. Whenever any part or parts of the National Guard reserve shall be mustered into the service of the United States, an equal number of companies, battalions or regiments shall forthwith be organized and mustered into the National Guard reserve created by the muster into the federal service of such organizations. Whenever any portion of the National Guard of this state shall be relieved from duty in the service of the United States, such organization shall resume their former designations as a part of the National Guard of this state, as if they had not been ordered into the federal service and the National Guard reserve organized to take their places shall be mustered out of the service of the state. The designation of organizations called into the service of of the United States shall not during such service be given to new organizations. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1055. Calling Out Reserve—Draft.

(Section 12.) Whenever it shall be necessary to call into active service the reserve militia, or any part thereof, the Governor shall direct his order to the adjutant-general, who, upon receipt thereof must promptly proceed to draft from the enrolled militia a sufficient number of men to satisfy the call, or accept as many volunteers as are required by the Governor. The persons drafted must be summoned by some officer appointed for that purpose by the adjutant-general, in the same manner prescribed by law for the summoning of witnesses in civil cases, the time and place for the rendezvous, as ordered by the adjutant-general, being stated in the summons. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1056. Deserters.

(Section 13.) Every member of the active militia ordered out, and every member of the reserve militia who volunteers, or who is drafted and notified thereof, under the provisions of the preceding section, who does not appear at the time and place designated by his commanding officer, or the adjutant-general, within twenty-four hours from such time, or who does not produce from a physician in good standing a sworn certificate of physical disability to so appear, shall be deemed a deserter and dealt with as prescribed in the articles of war of the United States. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1057. Physician Issuing False Certificate of Physical Disability.

(Section 14.) Whenever any physician shall knowingly make and deliver a false certificate of physical disability concerning any member of the militia who shall have been ordered out or summoned for active service, such physician shall thereby forfeit forever his license and right to practice in this state and shall be deemed guilty of perjury. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1058. Mustering Reserved Militia into Service.

(Section 15.) Whenever any portion of the reserve militia is called forth under the Constitution and laws of the United States the members thereof shall be immediately mustered into the service for three years, or such other period as the call may prescribe; and whenever any portion of such militia shall be ordered into the service of the state, they shall be mustered into the service for such period, not exceeding three years, as the Governor may direct. Such reserve militia, when so ordered into active service shall have as far as practicable, the same system of organization, equipment, training and discipline as are or may thereafter be prescribed for the National Guard. The Governor shall have the power to appoint the officers for any new organization formed out of the said reserve militia; he may, at his discretion, transfer and promote members of the National Guard to the organization thus formed and order into active service for this purpose such retired officers of the National Guard as may be efficient and available and in such manner as he may deem necessary. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1059. When the Governor may Declare State of Insurrection.

(Section 16.) Whenever any portion of the militia is employed in aid of the civil authorities, the Governor, if in his judgment the maintenance

of law and order will thereby be promoted, may by proclamation declare the county, city, or town, in which the troops are serving or any specified portion thereof, to be in a state of insurrection. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1060. Duty of Officer Receiving Call into Federal Service.

(Section 17.) Whenever reserve militia or the National Guard, or both, or any number of them or either of them, shall be called forth under the Constitution and laws of the United States, and the orders for that purpose shall not be issued to or transmitted through the Governor of the state, any officer or officers of the militia or National Guard receiving such order not so issued or transmitted, shall communicate the same to the Governor as soon as practicable. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1061. Time of Service When President Calls Forth the National Guards.

(Section 18.) Whenever the President shall call forth the National Guard, or any number of them to be employed in the service of the United States, and specifies in his call the period for which service is required, the National Guard, so called, shall continue to serve during the term so specified, either within or without the territory of the United States, unless sooner relieved by order of the President; provided, that no commissioned officer or enlisted man of the National Guard shall be liable to serve beyond the term of his existing commission or enlistment. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1062. Militia not Liable for Act in Performance of Military Duties.

(Section 19.) No member of the militia ordered into the active service of the state shall be liable civilly or criminally for any act done, or caused, ordered, or directed to be done, by him in furtherance of and while in performance of his military duties. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1063. Adjutant-general—Powers and Duties.

(Section 20.) The adjutant-general of the state shall have the rank of brigadier-general and shall be in time of peace, ex-officio, chief of staff, quartermaster-general, chief of ordnance, and paymaster-general, of the state. For the purpose of establishing the relation between the War Department and the various staff departments of the state, he shall be ex-officio chief of the said departments; and the requisitions, purchases, and issues to be made by the senior officers on duty of certain of said departments, and hereinafter prescribed, shall be made by them pursuant and in obedience to his direction and instruction:

1. He shall control the Military Department subordinate only to the Governor and may adopt such methods of administration not inconsistent with the laws, regulations, and customs of the service of the regular army so far as the same may be applicable, as he may deem necessary to render the department efficient. He shall appoint such clerical help as may be necessary and remove the same at his discretion.

2. He shall superintend the preparation of all returns, reports, plans and estimates required of the state by the War Department; and shall biennially on or before the first day of December make a report to the

Governor of the strength and condition of the active militia and of the business transactions of the department, including a detailed statement of expenditures for all military purposes:.

3. He shall be responsible for the care, preservation, and repair of all military property belonging or issued to the state for the arming and equipping of the militia, and he shall dispose of all military property of the state found unserviceable after a proper inspection, account for the proceeds thereof, and deposit the same into the state treasury to the credit of the military fund.

4. He shall turn in, in such manner as the War Department may require, such ordnance, accoutrements and equipments belonging to the United States and receive in substitute therefor such prescribed regulation ordnance and equipment, as may be necessary to conform to the standards required by the laws and regulations of the United States.

5. He shall, under the direction of the Governor, prepare requisitions for, and make purchase and issues of, such military property as is necessary to equip the organizations of the active militia according to the standard that is now or hereafter may be prescribed by the laws and regulations of the United States, except such purchases and issues as hereinafter required to be made by the senior officers on duty in other staff departments; he shall approve the bills of all purchases by whomsoever made and all issues; but no such property shall be issued or otherwise disposed of, to persons or organizations other than those of the active militia and persons of the reserve militia called into active service.

6. He shall keep a just and true account of all expenses necessarily incurred, including pay, transportation and subsistence of officers and enlisted men of the militia, and all military property; and shall render biennially to the Governor a statement in detail showing the disposition of all clothing, ordnance, arms, ammunition, and other military property on hand and issued.

7. Whenever the adjutant-general is absent from the state or is unable from any cause to perform his duties, the Governor shall during his absence or disability designate an officer of the active militia present for duty in the state to perform the duties of the adjutant-general. Such acting adjutant-general shall serve without pay.

8. The adjutant-general shall give a bond to the state in the sum of ten thousand (\$10,000) dollars, conditioned on the faithful performance of his duties as herein prescribed; and the costs and expenses incurred by entering into such bond shall be paid out of any moneys appropriated for the maintenance of the National Guard.

9. Whenever the adjutant-general shall be required to furnish any bond to the United States government for the faithful performance of any duty imposed upon him in the disbursing of funds allotted to the state under section 1661, as amended, of the Revised Statutes of the United States, the cost and expense incurred by entering into such bond shall be paid out of any moneys appropriated for the maintenance of the National Guard.

10. The adjutant-general shall receive a salary of one thousand eight hundred (\$1,800) dollars per annum and he shall be allowed for all necessary office and traveling expenses the sum of six hundred (\$600) dollars annually, which shall also be payment in full for all services rendered by

him under this or any other law of the state; and the same shall be audited and paid in the same manner as salaries and expenses of other state officers are paid. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1064. Inspector-general—Rank and Duties.

(Section 21.) There shall be an inspector-general with the rank of colonel, who shall make an inspection of every organization of the National Guard between the first of March and the thirtieth day of May in each year. He shall notify the commanders of the respective organizations the hour and places at which they shall assemble for such inspection, and shall make a detailed report on the armories, property, books, records, financial conditions of the various organizations of the active militia, and such other inspections as the adjutant-general may direct or the law may require, and forward same to the adjutant-general and if, after examination by him of the muster-roll and the report of the inspecting officer, each company, troop or battery is fully up to the required standard of numbers, discipline and efficiency, the adjutant-general shall so report to the state board of examiners, this board must on receipt of the report of the adjutant-general allow each company annually the sum of six hundred (\$600) dollars, and for each man additional to the minimum strength as required by the War Department, who may have been present at the annual inspection and the last camp of instruction five dollars extra; and to each troop or battery, nine hundred dollars, with five dollars extra for every man additional as above; each sanitary company three hundred dollars; each regimental headquarters, three hundred dollars; each battalion headquarters one hundred dollars; each regimental band three hundred dollars; such board must order the state auditor to draw a warrant on the state treasurer in favor of the commander of each regiment, battalion, company, troop, battery, and sanitary corps for the sum above stated. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1065. Duplicate Itemized Accounts and Statements to be Made by Commanding Officers.

(Section 22.) The commanding officer of each regiment, battalion, company, troop, battery, and sanitary corps and each regimental adjutant, must at each annual inspection return in duplicate to the inspector-general or inspecting officer an itemized account and statement of all public property and of all disbursements of the money appropriated during the preceding year by said regimental headquarters, battalion headquarters, regimental band, company, troop, battery and sanitary corps, which account and statement must be verified by the oath of the commanding officer and must be accompanied by the proper vouchers of such disbursement, and return shall be certified to by the inspecting officer and forwarded by him with his report to the adjutant-general. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1066. Property of Troops Mustered Out.

(Section 23.) When a company, troop or battery is disbanded or mustered out, all property and money in the treasury of such company, troop or battery must revert to the military fund of the state. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1067. Quartermaster-general's Department.

(Section 24.) There shall be a quartermaster-general's department which shall consist of one quartermaster-general with the rank of colonel whose duties shall correspond with those prescribed for a similar officer by the regulations of the War Department; if so ordered by the commander-in-chief there shall be an assistant quartermaster-general with the rank of captain. There shall also be one military storekeeper with the rank of captain who shall be paid a salary of twelve hundred (\$1200) dollars per annum. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1068. Senior Officer of Ordnance Department.

(Section 25.) The senior officer on duty with the ordnance department shall have the rank of major, and shall from time to time submit to the adjutant-general requisitions for all ordnance property, equipment, and accoutrements, and all range and target material, which requisition when approved by the adjutant-general, and submitted to and signed by the Governor shall if they be for material issued to the state by the ordnance department be forwarded to that department for supply, and if they be for material not so issued, then by the direction of the adjutant-general and in the manner prescribed in section 32, the senior ordnance officer shall purchase and direct the issue of such ordnance property and range material, certify all bills therefor as correct, and submit them to the adjutant-general. He shall, when required, or whenever he deems it necessary, report to the adjutant-general upon the condition of the ordnance, arms, and accoutrements on hand or issued to the National Guard; he shall point out all deficiencies and, so far as he is vested with authority, he shall be responsible that all organizations are armed and equipped as prescribed or as may hereafter be prescribed by the War Department, and when so ordered by the adjutant-general, it shall be his duty to make or cause to be made by the regimental inspector of small arms practice an annual inspection of all target ranges, and shooting-galleries used by the National Guard, to submit a report to the adjutant-general of the conditions and necessities of each and to make a detailed report of the transactions of his office to the adjutant-general on the fifteenth day of November annually. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1069. Senior Surgeon.

(Section 26.) The senior surgeon on duty in the medical corps shall have the rank of colonel, and under the direction of the adjutant-general and in the manner prescribed in section 32 shall purchase and direct the issue of all medical supplies and equipment, certify all bills therefor as correct and transmit them to the adjutant-general. It shall be his duty to make or cause to be made by any officer of the medical corps an annual inspection and inventory of the stock of medical supplies on hand at general headquarters, to make a list of the articles and quantities needed to equip the National Guard and in the manner prescribed by the War Department and submit the same to the adjutant-general for authority to supply the same; and he shall make to the adjutant-general a detailed report of the transactions of his office and of the condition and quantity of

medical supplies on hand, on the fifteenth day of November annually. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1070. Senior Officer in Subsistence Department.

(Section 27.) The senior officer on duty in the subsistence department shall have the rank of major and shall, under the direction of the adjutant-general purchase and issue in the manner described in section 32, all subsistence stores and property, certify all bills therefor as correct and transmit them to the adjutant-general; he shall make a detailed report of the transactions of his office to the adjutant-general on the fifteenth day of November annually. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1071. Judge Advocate.

(Section 28.) The judge advocate shall be appointed by the Governor, with the rank of major; he shall be an attorney at law of the supreme court of this state, of at least five years' standing. He shall be under the direction of the Governor, charged with the supervision of all things relating to the administration of justice in the military courts of this state; he shall diligently scrutinize and examine the proceedings of all courts martial and courts of inquiry which are submitted to him for review and report thereon to the adjutant-general; he shall when directed act as judge advocate or recorder of any military court or board; he shall be the legal adviser of the military department and to him may be referred for supervision all contracts, agreements or other instruments to be drawn or executed in the course of the business thereof.

He shall make detailed report of the transactions of his office to the adjutant-general on the fifteenth day of November annually. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1072. Attorney-general the Legal Adviser of Adjutant-general.

(Section 29.) The attorney-general of the state shall be the legal adviser of the adjutant-general. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1073. Staff Officers and Chief of Departments Appointed by Governor in Time of War or Insurrection.

(Section 30.) In time of war, insurrection, invasion or rebellion, or of immediate danger thereof, the Governor may appoint such staff officers and create such chiefs of such staff departments as may be necessary to provide for an increased active militia or to fill the vacancies caused by absence in active service, or for both purposes; provided, that appointments in staff departments or corps shall be made from officers of the existing staff departments or corps as promotions so far as such officers are available; providing, also, that promotion in each staff department or corps and appointments to fill vacancies thus created shall be made as hereinafter provided. Providing further that in time of peace whenever the formation of the active militia shall require it, the Governor may organize such additional staff departments as are thereby made necessary. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1074. Duties to be Performed by Staff Department and Corps Officers.

(Section 31.) Officers of all staff departments and corps shall perform

the duties required of them by law, and such others not inconsistent with the laws of the state as correspond to those which are now or may hereafter be required, of the corresponding staff department or corps of the regular army by the customs of the service, the orders of the War Department, and the laws and regulations of the United States. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1075. Purchases.

(Section 32.) Purchases of military property not exceeding one hundred dollars in value may be made in such manner as the purchasing officer may deem best. For other purchases not exceeding five hundred dollars, the purchasing officer shall procure written proposals from at least two parties. For purchases exceeding five hundred dollars in value the purchasing officer shall publicly advertise, for not less than ten days, for sealed proposals to be opened at the place, day and hour designated in such advertisement. All bids must be accompanied with a certified check for ten per centum of the amount of the bid; and he may require the persons contracting to give bond in such sum and surety as he may direct, conditioned on faithful performance, in default of which, such bond shall be prosecuted by the attorney-general, and all moneys recovered turned into the state treasury for the benefit of the military fund; provided, that in case of emergency occasioned by war, invasion, riot, insurrection, resistance to the law, or imminent danger thereof, or by flood, conflagration, or tempest, the Governor may direct that such property as may be urgently required be purchased in open market. Providing, also, that the right is reserved to reject any or all bids. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1076. Purchasing and Selling Officer not to be Interested.

(Section 33.) No officer herein authorized to make purchase or sales of military property shall be concerned, directly or indirectly, in the purchase or sale of any such property, except for and on account of the state; nor shall any such officer take or apply to his own use any gain or emolument for negotiating or transacting any business of his office other than what is allowed by law. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1077. Payments for Property Purchased.

(Section 34.) All property purchased under the authority herein granted shall be inspected and no payments shall be made therefor until it shall appear by the certificate of the inspecting officer that the property is of the kind and quality specified in the agreement. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1078. Indebtedness on Part of State.

(Section 35.) No officer or enlisted man shall contract or presume to authorize the contracting of any indebtedness on behalf of the state, unless especially authorized to do so by this code or by the express order of the Governor, and any person in military service who shall violate the provisions of this section shall be dishonorably discharged, and suffer such other punishment as a court-martial shall direct. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1079. National Guard Consists of Whom—Powers of the Commander-in-chief.

(Section 36.) The National Guard of the state shall consist of the necessary staff departments, a medical corps, the commissioned officers heretofore or hereafter retired, the organizations which have and which are now forming the National Guard at this date, and such others as may be organized hereafter and such persons as are or may be enlisted and commissioned therein. The commander-in-chief shall have the power to alter, divide, consolidate, disband or reorganize any organization or corps and create new organizations and corps whenever required by the provisions of this act, or whenever in his judgment the efficiency of the state forces shall be thereby increased, and he shall have power and it shall be his duty to change the organization of the state forces so as to conform to any organization, system of drill or instruction now or hereafter prescribed by the laws and regulations of the United States for the organization and government of the militia; and for that purpose the number of officers and noncommissioned officers of any grade may be increased or diminished, or the grades may be altered, whenever necessary to secure such uniformity. Whenever the National Guard is organized, by order of the commander-in-chief, into a brigade, a brigadier-general shall be selected as prescribed in section 49 to command the same. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1080. New Organizations.

(Section 37.) New organizations may be raised on petition to the Governor, or by his orders; and when the minimum number of persons required by law shall have been mustered in they shall proceed at such meetings to elect by ballot, under the superintendence of the mustering officer, the several officers required by law, and a majority shall be necessary to a choice. After such election the name and rank of such officers shall be entered upon the muster-roll, and the mustering officer shall certify and forward the same together with a copy of the proceedings and notice of such meeting to the adjutant-general. If it shall appear that such organization shall have been perfected and such officers elected according to law, and the Governor shall approve such organization and officers, such company shall be enrolled as part of the National Guard and the officer commissioned. If he disapproves of any officers so elected he may direct other meeting or meetings to elect others instead. Whenever the Governor shall have authority to appoint officers of the line, he may raise new organizations and appoint the officers thereof whenever and in such manner as he may deem best for the good of the service. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1081. Number of Militia in Time of Peace.

(Section 38.) The aggregate forces of the active militia in time of peace, fully armed, uniformed, and equipped shall not exceed five thousand men; but in case of war, insurrection, invasion, or rebellion, or imminent danger thereof, the Governor shall have power to increase the forces beyond the said five thousand and organize them as is required by law. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1082. National Guard to be Organized in Accordance With What Standard.

(Section 39.) The organization, armament and discipline of the National Guard of this state and of the military units thereof shall be the same as that which is now or may hereafter be prescribed or provided by the laws and regulations of the United States for the organized militia; and the commander-in-chief is hereby authorized and it shall be his duty to issue and prescribe from time to time such orders and regulations, and to adopt such other means of administration, as shall maintain the prescribed standard of organization, armament and discipline; and it shall be the further duty of the commander-in-chief to prescribe such regulations and to adopt such methods of administration, for the care, preservation, disposition of and accountability for all military property issued to the active militia and belonging to the United States; for procuring, disbursing and accounting for all military funds allotted to the state; for arming, equipping, and supplying the active militia; and for arranging for such camps of instruction, field service and rifle practice as shall meet the requirements that are now or may hereafter be prescribed by the laws and regulations of the United States. And such orders, regulations, and means adopted shall have the full force and effect of the law. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1083. Brigade—Staff of Brigade Commander.

(Section 40.) The regiments and all other military units of the National Guard shall, when so ordered by the Governor, constitute a brigade, which shall be commanded by a brigadier-general, or, in case of his absence or disability, by the senior line officer of the National Guard. The staff of the brigade commander shall consist of one surgeon, one adjutant-general, one ordnance officer, one commissary, one quartermaster and one judge advocate, majors; and two aides, lieutenants, detailed from the National Guard. In addition to the above the Governor may, upon the recommendation of the brigade commander, detail from the National Guard for duty on the brigade staff such other officers as may be necessary, but no officer shall be so detailed except to a position authorized by the orders of the War Department or by the laws and regulations governing the regular army or the organized militia. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1084. Departments.

(Section 41.) There shall also be the following departments: A pay department, a chief paymaster, major; a corps of engineers, a chief engineer, major; a signal corps, a chief officer, captain, and a medical corps organized as prescribed in the following section. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1085. Medical Department.

(Section 42.) That from and after the approval of this act the medical department of the National Guard shall consist of a medical corps, a medical reserve corps and the hospital corps. The medical corps shall consist of the officers necessary for the staff department, for service with the regiment, separate battalions and artillery corps of the National Guard and for the organization of such ambulance companies, field hospitals, and supply

depots, as may be authorized or required as the proper complement for the National Guard by the orders of the War Department, or the laws and regulations of the United States governing the organized militia; and such officers shall have the same title as those of the corresponding grades in the United States Army, and shall be of the same grades and numbers as are authorized or prescribed by the laws and regulations of the United States for service with the corresponding organizations of the regular army, or as authorized or prescribed by the said laws and regulations or orders of the War Department for the government of the organized militia. Immediately following the approval of this act officers of the medical department then on the active list shall be recommissioned in the corresponding grades in the medical corps established by this act in the order of seniority as follows: Surgeons with the rank of major as majors, medical corps; assistant surgeons with the rank of captain as captains, medical corps; assistant surgeons with the rank of first lieutenant as first lieutenants, medical corps. All promotions in the medical corps to fill vacancies in the several grades created or caused by this act or hereafter occurring, shall be made according to seniority and no person shall receive an appointment in the medical corps unless he shall have been examined and approved by the medical board of the National Guard as hereinafter prescribed. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1086. Commissions to Contract Physicians With Rank of First Lieutenant of the Medical Reserve Corps.

(Section 43.) For the purpose of securing competent medical practitioners to conduct the physical examination of applicants for enlistment and to render medical service to any organization called out by the Governor to suppress insurrection, riot, or resistance to the laws, the Governor of the state is authorized to issue commissions as first lieutenants of the medical reserve corps to such contract surgeons as shall be favorably recommended by the senior officer of the medical corps, not to exceed one to each company or other organization so situated that the services of an officer of the medical corps cannot be effectually available. Such officers are not members of the National Guard nor entitled to retirement, but the commissions so given shall confer upon the holder all the authority, rights and privileges of commissioned officers of like grade in the medical corps of the National Guard, except promotion, but only when engaged in active duty as examining surgeon of recruits or in rendering services to any command in which they may be attached in time of insurrection, riot, or resistance to the law. They shall have rank in said corps according to the date of their commissions therein, and when employed on active duty shall rank next below all officers of like grade in the National Guard; provided, that contract surgeons now in the military service who receive the favorable recommendation of the company commanders at the station where such contract surgeons reside and of the senior officer of the medical corps, shall be given preference in appointment over all other applicants; and provided further, that any officer of the medical reserve corps who fails to perform his duty as herein prescribed shall forfeit his commission and not be eligible to reappointment. Officers of the medical reserve corps when called into or engaged in active duty shall be subject to the laws, regulations and orders for the government of the National Guard; and for conducting the physical examination of applicants for enlistment shall be

entitled to such compensation as the Governor in regulations may prescribe, and for all other services to the pay and allowance as first lieutenants of the medical corps. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1087. Hospital Corps.

(Section 44.) The hospital corps shall consist of the sergeants first class, sergeants, corporals, private first class and privates, required for service with the several organizations of the National Guard, ambulance companies, or field hospitals; and such noncommissioned officers and privates shall be of the same grade and numbers as are authorized or prescribed for service with the corresponding organizations of the regular army or as authorized or prescribed by the orders of the War Department, or laws and regulations of the United States for the government of the organized militia. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1088. Enlistment and Appointments in the Hospital Corps.

(Section 45.) Enlistments in the hospital corps and the appointment of noncommissioned officers therein shall be as prescribed in regulations by the Governor. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1088a. Commission of Officers—Oath.

(Section 46.) All officers shall be commissioned by the Governor at his discretion, but no one shall be commissioned unless the conditions and qualifications set forth in the following sections have been complied with, and no one shall be recognized as an officer unless he shall have been duly commissioned and shall have taken the constitutional oath of office, which shall be in form as follows:

I, . . . , do solemnly swear that I will support the Constitution of the United States and the Constitution and laws of the state of Montana, and bear true faith and allegiance to the same, and that I will yield a prompt obedience to all orders and instructions from my superior officers, and to all laws and regulations promulgated for the organization, government and discipline of the National Guard of Montana. So help me God.

Subscribed and sworn to before me this . . . day of, . . . 19..

.....

Title of Officer.

Such oath shall be taken and subscribed before an officer authorized by law to administer an oath, or some general or field officer or an officer who shall hold the assimilated grade of a field officer, who has taken the oath himself and who is hereby authorized to administer the same.

The acceptance of a commission in the militia of this state shall be deemed a resignation by the person, accepting the same of all other commissions held by him in such militia. In no case shall an officer in the active militia be commissioned to a higher grade than that prescribed for the corresponding command by the laws and regulations for the government of the regular army of the United States or of the organized militia. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1089. Qualifications of Commissioned Officers.

(Section 47.) Commissioned officers must be citizens of the United States and twenty-one years of age or over. No person who has been expelled or dishonorably discharged from any military or naval organization of this or any other state or of the United States shall be commissioned, and no person shall be commissioned unless he shall possess the additional requirements prescribed in this act for the particular office to which he is to be commissioned; providing that in time of war, insurrection, invasion, rebellion, or immediate danger thereof, the Governor shall have the power to fill any vacancy in any field grade by the appointment thereto of any officer on the active list of the army of the United States. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1090. Regulations of the Federal Army to Determine Rank of Officers of National Guard.

(Section 48.) Rank and precedence of officers and noncommissioned officers of the National Guard of this state, the power of command and the commands appropriate to each grade, shall be as determined by the laws and regulations for the government of the regular army of the United States. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1091. Vacancies—Oath of Officer.

(Section 49.) Vacancies in the grade of brigadier-general shall be filled by promoting the senior colonel; vacancies in the field grades of regiments and corps by promoting the senior officer of the regiment or corps of the next lower grade; vacancies in the grade of captain and lieutenant by promoting the senior officer of the company of the next lower grade. Subject in each case to examination as prescribed in section 55. Vacancies in the grade of second lieutenant shall be filled in the following manner: An election shall be ordered by the adjutant-general and the successful candidate shall be ordered to appear before the examining board, and if found qualified, both physically and mentally, shall be commissioned. Should the candidate be found deficient a new election shall be ordered and the same procedure gone through.

Every officer duly commissioned shall within ten days accept the same and take the constitutional oath of office; such oath may be taken and subscribed before any officer authorized by law to administer an oath or before any military officer who has taken the oath himself; and in case of neglect or refusal to accept the commission or to take and subscribe the oath within the time mentioned, such commission shall be canceled by the Governor, and a new election ordered or appointment made to fill the vacancy. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1092. Age Limits to Appointments.

(Section 50.) No person shall be elected, appointed or commissioned to any of the following grades, who is over the age limit prescribed for each of the several grades, namely, brigadier-general, sixty-four years; colonel and lieutenant-colonel, sixty-one years; major, fifty-six years; captain, fifty years; first lieutenant, forty-five years and second lieutenant, forty years. Any officer who shall, while serving in any of the above grades, reach the age limit prescribed for said grades, shall in time of peace, if eligible, be retired; otherwise, honorably discharged. This section shall not apply to the adjutant-general of the state of Montana, and

shall not serve to vacate any commission now in force; nor shall it apply to chaplains of the National Guard. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1093. Vacancies in Staff, Hospital and Ordnance Departments—Appointment of Staff Officers.

(Section 51.) Vacancies occurring in the various grades, except the lowest, of the several staff departments and corps, shall be filled by promoting and appointing the senior officer in the next lower grade of said department or corps. Vacancies occurring in the lowest grades thereof shall be filled in the following manner:

In the medical department all commissioned officers of the National Guard, all noncommissioned officers in the hospital corps, and all officers of the medical reserve corps who are active licensed practitioners of medicine and surgery in this state of at least five years standing as such, and who are physically sound shall be permitted to appear before a board of examination consisting of officers of the medical department, and the applicant whom the board considers, after professional and general examination, to be the best qualified for the position shall be appointed to fill the vacancy.

In the ordnance department, the vacancy shall be filled by promoting thereto, in order of seniority the regimental assistant inspector of small arms practice in the subsistence department by promoting thereto, in order of seniority, the regimental commissary; subject in each case to examination as prescribed in section 55, and if, for any reason, a vacancy occurring in the lowest grade of any said departments be not filled by this method of promotion, then the Governor may fill such vacancies in such manner as he deems best.

Commanding officers of brigades, regiments, and separate battalions shall appoint their respective staff officers subject to the provisions of sections 43, 44, 50 and 51 of this act, who shall hold office during the pleasure of the officer making the appointment and until their successors are appointed and qualified, subject at all times to the same laws and regulations as apply to other commissioned officers of the National Guard.

Battalion staff officers are appointed by the regimental commanders upon recommendation of the battalion commanders. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1094. Chaplains.

(Section 52.) The Governor is authorized to appoint, upon the recommendation of the several regimental commanders, chaplains in the National Guard at the rate of one for each regiment, with the rank of captain; no person shall hereafter be appointed a chaplain who is more than fifty-five years of age, and until he has furnished proof that he is a regularly ordained minister of some religious denomination in good standing. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1095. Examination for Grade of Second Lieutenant.

(Section 53.) The Governor may prescribe a system of examination to determine the enlisted men best qualified for appointment to the grade of second lieutenant as prescribed in section 46, and the best qualified ap-

plicant for appointment to the lowest grade in the medical corps as prescribed in section 48. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1096. Examinations for Appointment or Election to Other Commissioned Offices.

(Section 54.) The Governor shall prescribe a system of examination to determine the fitness for commission consequent on an original appointment or election of all persons, other than those provided for in the preceding section; and no person shall be commissioned consequent upon an original appointment or election until he shall have passed a satisfactory examination as to his physical, moral, educational, and general fitness for the service. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1097. System of Examination for Active Militia Below Grade of Lieutenant-colonel.

(Section 55.) The Governor shall prescribe a system of examination of all officers of the active militia below the grade of lieutenant-colonel to determine their physical, moral, professional and general fitness for promotion or for appointment other than the first, such examination is to be conducted, if practicable, at such time anterior to the accruing of the right to promotion or to the issuance of the commission as may be best for the interests of the service; provided, that the Governor may waive the examination for promotion or appointment in any grade in the case of any officer who in pursuance of existing laws has passed a satisfactory examination for such grade prior to the passage of this act, and provided that if any officer fails to pass a satisfactory examination and is reported unfit for promotion or appointment, the officer next below him in rank or standing next in the line of promotion, having passed said examination, shall receive the promotion, or if the office is elective the Governor shall order another election; and provided that should the officer be found incapacitated for service by reason of physical disability he shall be retired with rank to which his seniority entitles him to be promoted, and should he fail for any other reason, other than moral fitness, he shall be suspended from promotion or appointment to any office in the active militia for one year, and should he fail the second time to pass such examination he shall be honorably discharged, but should he be found lacking in moral fitness, he shall, if the Governor approve of such findings, be discharged for the good of the service; provided also that the examination into the professional fitness of a judge advocate and a chaplain shall extend no further than to the special qualifications required of them. The board of examination under this and the two preceding sections shall have the same power to take evidence, administer oaths, and compel witnesses to attend and testify and produce books and papers and punish their failure to do so, as is possessed by a general court-martial. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1098. Governor may Confer Brevet Commission for Gallantry.

(Section 56.) The Governor may, upon the recommendation of his commanding officer, confer a brevet commission of a grade next higher than that actually held by the officer so recommended, upon any officer of the National Guard in active service, for distinguished gallantry. Such

commission shall carry with them only such privileges or rights as are allowed in like cases in the military and naval services of the United States. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1099. Officer Placed upon Retired List.

(Section 57.) Any officer who shall reach the age limit prescribed in section 50 or who shall fail in a second examination as prescribed in section 55, or who shall be rendered surplus by reduction or disbandment of his organization in any manner provided for in this act, or who accepts an appointment in the army, navy or marine corps of the United States, or who tenders his resignation and the same having been accepted, shall if in case he is eligible be placed on the retired list otherwise shall receive an honorable discharge, providing he shall not be under arrest or returned to a military court for any deficiency or delinquency and providing he be not indebted to the state in any manner and that all his accounts for money and public property be correct. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1100. Delinquent Officer Retired for Good of Service.

(Section 58.) Any officer who shall be found lacking in moral fitness under the provisions of section 52, or who shall be discharged under the provisions of section 57, or who being under arrest or returned to a military court for any deficiency or delinquency, or who after being notified fails or refuses to liquidate his indebtedness to the state, or to render correct accounts of public funds or property intrusted to his care, tenders his resignation, and the same being accepted, shall be discharged for the good of the service, and any officer so discharged, shall not again be eligible to receive a commission. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1101. Retired List.

(Section 59.) Any officer who is sixty-four years old, or who is found incapacitated for service by reason of physical disability under the provisions of section 55, or who shall while serving in any grade reach the age limit prescribed for that grade in section 47 and be eligible for retirement due to the length of service or other cause specified in this section, shall be withdrawn from active service and placed on the retired list.

Any officer who has served twenty-five years as a commissioned officer in the active militia of this state, or who is sixty years old, may be, by order of the commander-in-chief, withdrawn from the active service and placed on the retired list.

Any officer who has served as a commissioned officer in the active militia of this state six consecutive years, or as such nine years not necessarily consecutive, or nine years either as an officer or soldier in which shall be counted honest and faithful service in the military or naval service of the United States, or both, provided six years of which have been service as a commissioned officer in the active militia of the state, shall, if he make application, be placed on the retired list with the highest rank held by him during his service.

Any officer who has served as a commissioned officer in the active militia of this state for a continuous period of fifteen years, honorable service in war, to be counted double, may at his own request be placed upon

the retired list with one grade higher rank than that held at the time of his retirement.

Retired officers shall be entitled to wear the uniform of the rank in which they were retired; they shall continue to be borne on the National Guard register, shall be subject to military law, and may, in the discretion of the Governor, be assigned to active duty in time of war, insurrection, invasion, or immediate danger thereof. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1102. Disabled Officers.

(Section 60.) Any officer who has become or who shall hereafter become disabled and thereby incapable of performing the duties of his office shall be withdrawn from active service and placed on the retired list; and any commissioned officer who has become or who shall hereafter become unfit or incompetent, and thereby incapable of performing the duties of his office, shall upon the recommendation of his commanding officer or of an inspecting officer, be discharged or, if eligible thereto, retired, in the discretion of the commander-in-chief. Such retirement or discharge shall be by order of the commander-in-chief, who, before making such order shall convene a board of not less than five commissioned officers, one of whom shall be an officer of the medical corps, who before entering upon the discharge of their duties shall be sworn to an honest and impartial performance of the same, whose duty it shall be to determine the facts as to the nature and cause of incapacity of such officer as appears disabled or unfit or incompetent, from any cause, to perform military duty and whose case shall be referred to it. The board excepting the officer or officers of the medical corps shall be composed, as far as may be, of seniors in rank to the officer whose incapacity is inquired of; it shall be invested with the powers of courts-martial and courts of inquiry, and whenever it finds an officer incapacitated for active service, it shall report such fact to the Governor stating the cause of incapacity, whether from disability, unfitness, or incompetency, and if he approve such finding such officer shall be placed on the retired list, or discharged, as provided in this act; provided that it shall not be necessary to convene a board for action on any case arising under this section, unless the officer designated to be placed on the retired list or discharged shall, within twenty days after being notified that he will be so retired or discharged, serve on the adjutant-general of the state, a notice in writing that he demands a hearing and examination before such board; and providing that no officer shall be so retired or discharged without having had full and fair hearing before the board if upon due notice he shall demand it, provided, further, that the commander-in-chief shall whenever he may deem the good of the service requires it, order any commissioned officer before a board of examination constituted as above, and the board shall examine into the moral character, capacity, and general fitness for the service of such commissioned officers, and record and return the testimony taken and a record of its proceedings, and if the findings of such board be unfavorable to such officer, and be approved by the Governor, he shall be discharged for the good of the service. Failure to appear when ordered before a board constituted under this section shall be sufficient ground for finding by such board and the officer ordered to appear be so discharged. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1103. Discharge for Absence Without Leave.

(Section 61.) Any officer who shall have been absent without leave for a period of three months shall upon the recommendation of his immediate commanding officer be discharged from the service by order of the commander-in-chief. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1104. Removal of Officers.

(Section 62.) No officer shall be removed from office without his consent, except by the sentence of a general court-martial or as provided in this act. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1105. Recruits — Qualifications—Examination—Enlistment—Musicians.

(Section 63.) Recruits enlisting in the active militia must be able-bodied men, free from disease, of good character and temperate habits, between the ages of eighteen and forty-five years, except that men may be enlisted as musicians if more than sixteen years of age; and in time of peace no person who is not a citizen of the United States and of this state, or who has not made legal declaration of his intentions to become a citizen or who cannot speak, read, and write the English language or who does not reside within a town where an organization of the organized militia is stationed, or within a radius of twenty miles, shall be enlisted in the active militia; provided that the character and the standard of the physical examination required for enlistment in the National Guard shall be prescribed in the regulations of the War Department and the laws of the United States for the government of the organized militia, and provided that no person under the age of twenty-one years, having parents or guardian entitled to his custody shall be enlisted or mustered into the active militia of the state without the written consent of such parent or guardian.

No person not of the age specified above, no insane or intoxicated person, no deserter from the military or naval service of the United States, or of this or any other state, and no person who has been convicted of a felony shall be enlisted in the active militia.

Hereafter all enlistments in the active militia shall be for a term of not less than three years, and no person shall again be enlisted whose service during the last enlistment in the active militia was not honest and faithful, or who has been dishonorably discharged or discharged without honor from any military or naval organization of the state or of the United States, unless he produces the written consent to such enlistment of the commanding officer of the organization in which he last served or from which he was dishonorably discharged or discharged without honor, and unless such enlistment be approved by the adjutant-general.

Men who have been discharged by reason of disbandment may be enlisted and shall then receive credit for the period served at the time of disbandment; and a man discharged for physical disability shall if such disability cease and he again enlists, receive credit for the period served prior to such discharge.

Chief and principal musicians, musicians and privates of the hospital corps may be enlisted as such. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1106. Re-enlistment—Oath of Allegiance.

(Section 64.) When a soldier re-enlists within sixty days from the expiration of his last preceding enlistment, his services shall be considered as continuous and the re-enlistment shall be dated as of the day following such expiration; and when the term of service of any enlisted man expires during a period of furlough or while he is serving in the military or naval forces of the United States, should he re-enlist in the active militia within sixty days of his muster out of the service of the United States, his service shall be considered as continuous, and shall in like manner commence on the day following such expiration, and the re-enlistment shall be dated as of the day following such expiration.

No man of forty-five years of age or over shall be re-enlisted unless he has served the full period of his last preceding enlistment, has the permission of the commanding officer of the organization in which he desires to enlist, and of the adjutant-general, and has passed the physical examination prescribed by regulations; nor shall such man be again re-enlisted.

Every person who enlists or re-enlists shall sign and make oath to an enlistment paper which shall contain an oath of allegiance to the state and the United States, and be in such form as may be prescribed in the regulations issued under this act; such oath shall be taken and subscribed before a commissioned officer of the active militia, and all such commissioned officers are hereby authorized to administer such oath, and, when designated by the commanding officer of the company or other organization or by other proper military superior, to make and complete valid enlistments in the active militia. A person making a false oath as to any statement contained in such enlistment paper shall upon conviction be deemed guilty of perjury. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1107. Transfers of Men and Officers.

(Section 65.) The commander-in-chief shall have the power to make and cause to be made such transfers of officers and enlisted men within a regiment, corps or separate organization, and between the line and the hospital corps, as may be for the best interests of the service, and to provide regulations therefor. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108. Appointment, Promotion, Reduction of Noncommissioned Officers.

(Section 66.) General, post, regimental and battalion noncommissioned staff officers, and noncommissioned officers of companies and bands, shall be appointed, promoted, reduced and warranted in accordance with, and their duties defined by, the regulations under this act, which shall be the same, so far as may be, as the corresponding regulations governing the regular army. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108a. Enlisted Men Dropped on Change of Residence or Absence.

(Section 67.) Any enlisted man, who shall remove his residence to such distance from the armory of his organization, or the armory, or post at which he is detailed to serve, or who, after diligence, cannot be found, may be dropped from the rolls by the authority of the adjutant-general, upon the recommendation of the company commander; an enlisted man, dropped from the rolls by reason of removal may upon change in his

residence be taken up at any time upon his own application approved by the adjutant-general. A man shall not be taken up from dropped until he has passed the physical examination required upon enlistment and men taken thus taken up shall receive credit for the time served before being dropped. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108b. Discharges to Enlisted Men.

(Section 68.) No enlisted man shall be discharged from the service without a discharge in writing signed by his regimental commander and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the commander-in-chief or adjutant-general, by sentence of a general court-martial or military commission, or certificate of disability by direction of the adjutant-general, and in compliance with an order of a court of competent jurisdiction, or a judge or justice thereof, on a writ of habeas corpus.

Discharges shall be of the following kinds:

1. Honorable discharge which shall be given to every soldier whose service has been honest and faithful, his conduct having been such as to warrant his re-enlistment.

2. Discharge without honor, which shall be given to a soldier discharged:

(a) Without trial, on account of fraudulent enlistment.

(b) Without trial, on account of having been disqualified for service, physically or in character, through his own misconduct.

(c) On account of imprisonment under the sentence of a civil court.

(d) Where discharged without honor especially ordered by the commander-in-chief for any other reason.

(e) When upon expiration of the enlistment the service has not, in the opinion of the company commander, concurred in by a board of officers, been honest and faithful. The company or detachment commander who deems the service not honest and faithful shall, if practicable, so notify the soldier at least thirty days prior to discharge, and shall at the same time notify the regimental commander, who will in every case upon the written request of the enlisted man convene a board consisting, if practicable, of three officers one of whom the convening officer may be, to determine whether the soldier's service has been honest and faithful. The soldier shall be given a hearing and the decision of the board shall be final.

3. Dishonorable discharge may be given to a soldier:

(a) Sentenced to be discharged by a court-martial or a military commission.

(b) Fined by a court-martial or military commission and who fails to pay such fine within thirty days after it was imposed.

(c) Convicted of felony.

(d) Whose commanding officer makes application to the adjutant-general for his discharge for the good of the service, stating briefly the misconduct relied upon as a ground for the discharge; if the adjutant-general, after investigation in which the soldier complained of shall be given a full and fair hearing, concur in the application, he may issue his order for dishonorable discharge. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108c. Faithful Service Medal.

(Section 69.) Hereafter, when any commissioned officer or enlisted man of the active militia of this state shall have served for nine years, not necessarily continuous, he shall receive a faithful service medal, which shall be of bronze and of such pattern and design as shall be hereafter selected. After fifteen years' service, not necessarily continuous, he shall receive such medal which shall be of silver, and of a different pattern or design from the bronze medal. After twenty years' service, not necessarily continuous, he shall receive such medal, which shall be of gold, and of a different pattern or design from either the bronze or silver medals. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108d. Regulations of Armies of the United States.

(Section 70.) Matters of military courtesy and discipline; precedence of regiments; details and working parties; special duty; official designation and duty of officers; records; flags, colors and standards; instruction and administration of regiments; battalions and companies; interior economy of companies; rosters, detachments and daily service; honors, courtesies and ceremonies; guards; practical and theoretical instruction; care, accountability for public property; surveys of property; staff administration and general duties of the staff corps; military correspondence; orders; muster rolls; return of troops and battle reports; arrest and confinement; and field service, shall, in general so far as practicable and consistent with this act, be as now or hereafter prescribed in the regulations of the armies of the United States. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108e. Drill and Inspection.

(Section 71.) The commander-in-chief may in his discretion at such times and under such regulations as he may prescribe order each colonel commanding a regiment, or, in case of his disability or when designated by him, of the lieutenant-colonel, and each major commanding a battalion to parade, inspect and report upon the drill, military efficiency of the several companies under his command at least once each year. In addition to the inspections provided for in this section, the inspector-general shall make the inspections prescribed in section 20 of this act; and the commander-in-chief may, whenever he deems it necessary, order an inspection by a medical officer of the officers and men, armories, clothes, and equipment of the active militia. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108f. Course of Instruction and Schools—Practice and Maneuvers—Encampment.

(Section 72.) The commander-in-chief shall prescribe for the officers and men of the regiments and staff departments of the National Guard a course of theoretical and practical instruction, and shall organize such schools, designate such instructors and make such regulations, as may be required to accomplish such instructions.

He shall have the power to order all or any part of the National Guard to participate in any encampment, maneuvers and field instruction of any part of the regular army at or near any military post or camp of the United States, whenever such participation shall have been provided for by the Secretary of War; and he shall during the next year preceding such annual

allotment in accordance with section 1661 of the Revised Statutes of the United States, as amended, require every company, troop and battery in the National Guard, to participate in practice marches or go into camps of instruction at least ten consecutive days, and to assemble for drill and instruction at company, battalion or regimental armories or rendezvous or for target practice not less than twenty-four times, and shall also during the same period require an inspection of each such company, troop and battery to be made by an officer of such National Guard or an officer of the regular army. No parade or drill of the active militia shall be ordered on any day during which any election shall be held, except in cases of riot, invasion or insurrection, or immediate danger thereof, or of public danger resulting from flood, conflagration or tempest.

In time of peace, in every odd-numbered year, there shall be an encampment of the National Guard of Montana, not to exceed ten days in duration, exclusive of the time used in traveling to and from such encampment, to be held at such point within the state and at such time as the Governor may direct.

For such service at such encampment the National Guard shall be entitled to the following per diem:

Privates and musicians	\$1 50
Corporals	1 60
Sergeants	1 75
Noncommissioned staff officers	2 50
Members of the regimental band	2 00
Commissioned officers, the pay of their rank and grade in the United States army.	
First sergeant	2 25

In addition to the per diem allowed above the necessary transportation and subsistence in going to and returning from such encampment shall be allowed, all of which shall be paid from the treasury of Montana on approval by the Governor; provided, that commissioned officers shall not be entitled to subsistence.

Whenever the troops of this state, or any part or portion thereof shall go to maneuver camps at a point designated by the War Department, the enlisted men thereof shall receive from the state of Montana, in addition to the army pay, the difference between such army pay and the state pay herein provided for state camps.

All claims for transportation and subsistence of such troops shall be proper charge against the state and shall be audited and paid the same as other claims against the state out of any moneys in the general fund not otherwise appropriated. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108g. Pay of Men and Officers Serving to Suppress Riots, Insurrections, etc.

(Section 73.) Every enlisted man in the National Guard of Montana shall receive a per diem of three dollars and the necessary transportation and subsistence, and every commissioned officer shall receive the pay of his rank and grade in the regular army, and the necessary transportation, when serving under the orders of the Governor to suppress riots, mobs, insurrection, and in the event of public disaster resulting from conflagration, flood

or tempest, or to enforce the civil law. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108h. When Sheriff or Mayor may Call upon the Governor for Military Aid.

(Section 74.) In case of tumult, riot, mob, or body of men acting together by force with intent to commit a felony or to offer violence to persons or property or by force and violence to break and resist the laws of the state or of the United States, or of immediate danger thereof, the sheriff of a county or chief executive of a city may call upon the Governor for aid, and the Governor may, in his discretion, order out in aid of the civil authorities such number of troops as he may deem necessary. The commanding officer of such troops shall remain strictly responsible to his military superior for the manner in which the troops shall be used to accomplish the desired end. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108i. When Commanding Officer may Close Certain Places.

(Section 75.) Whenever any part of the active militia is on active duty, pursuant to the order of the Governor or call of the civil authorities, to aid in the enforcement of the laws, the commanding officer of such troops may order the closing of any place where intoxicating liquors, arms, ammunition, dynamite, or other explosives are sold, and forbid the selling, bartering, lending or giving away any of said articles so long as any of the troops remain on duty in such places, or in the vicinity thereof, whether any civil officer has forbidden the sale or not. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108j. Notice for Duty.

(Section 76.) Notice for duty at encampments, maneuvers and field instruction shall be given at least ten days prior thereto, and for other duty at such time as the officer issuing the order shall prescribe. Such notices shall be given orally or by written or printed notice in hand; providing that the posting of the copy of an order in a conspicuous place in the drill or business room of the company, at a regular meeting held not less than four days before the time fixed in such order for the performance of any city shall be sufficient notice to all members of the company present at such meeting, and provided that when the days upon which the stated drills provided by law, orders, or regulations are to be held have been fixed, no further notice thereof shall be required to the members of the company. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108k. Annual Prizes for Marksmanship.

(Section 77.) To encourage marksmanship the Governor is authorized to offer annually prizes for those who shall excel in small arms practice, and prizes for competition among the organizations and corps of the National Guard. All such prizes shall be competed for under regulations prescribed by the inspector of small arms practice, approved by the adjutant-general. Members of any staff corps or departments assigned to duty with any command shall be considered a part of such command for the purposes of the competition herein authorized. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 11081. Medals for Perfect Attendance.

(Section 78.) Every officer or enlisted man of a company, troop or battery who has a perfect record of attendance at every military duty for one calendar year, shall receive a suitable medal therefor, and a bar or clasp for each additional calendar year of perfect attendance, either continuous or otherwise. [Amendment approved, March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108m. Allowance to Officer for Uniform and Equipment.

(Section 79.) To assist in providing the necessary uniform and equipment each commissioned officer shall receive, after his first year's service as such, an allowance of forty dollars, and each year thereafter such amount, not exceeding the sum of twenty-five dollars, as he shall have expended; provided, that he has performed seventy-five per cent of all ordered duty; and provided further that each mounted officer shall receive an additional sum of ten dollars (\$10) annually, but before any money is paid to any such officer he shall furnish vouchers to the adjutant-general showing that such expenditures have been made, and all such claims shall be audited and paid as are other claims against the state. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108n. Compensation and Expenses of Men and Officers Called Out for Active Duty.

(Section 80.) When the active militia, or any portion thereof, shall be called forth in aid of the civil authorities, or in the event of public disaster resulting from conflagration, flood or tempest, or assembled in obedience to such call, as provided for in section 74, all officers and men thereof shall receive the pay set forth in section 73, and such compensation and the necessary expenses incurred in quartering, caring for, transporting and subsisting the troops, as well as the expense incurred for pay, care and subsistence of officers and enlisted men temporarily disabled in the line of duty, while on such duty, shall be paid out of any moneys in the general fund of the state not otherwise appropriated.

To all officers ordered to make inspection or other journeys necessary in the military service shall be allowed all actual and necessary expenses, in addition to the pay of their rank and grade, incident to the performance of such service.

Whenever deemed necessary, the adjutant-general may authorize the commutation of rations for enlisted men, which shall be at the rates fixed by the regulations of the United States in force at the time.

The adjutant-general whenever necessary, and in such manner as he may deem best, shall provide suitable mounts for all officers and enlisted men required to perform mounted duty. He shall also approve all other just and reasonable claims, payments, and expenditures, legally made in behalf of the military service of the state. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108o. Approval and Payment of Military Accounts.

(Section 81.) All military accounts, unless otherwise specifically provided by law, shall be approved by the person authorized to contract the same and transmitted to the adjutant-general for his examination and approval. Upon approval, such account shall be presented to the state board

of examiners, and if approved by such board shall be paid as are other claims against the state; provided that no payment shall be made or allowed except for duty actually performed or services actually rendered; and providing that no payment of any sum authorized by this act shall be made to any person until there shall have been first deducted therefrom all amounts due by him to the state on any military account whatsoever. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108p. Injured Men—Expenses and Medical Care—Payment.

(Section 82.) Any member of the active militia who shall, in case of riot, tumult, breach of peace, insurrection or invasion, or whenever called into the active service of the state by order of the Governor, or called in aid of the civil authorities, or when participating by the order of the Governor in any encampment, maneuvers and field instruction of any part of the regular army at or near any military post or camp of the United States, or when participating by order of the Governor in practice marches or camps of instruction for at least five consecutive days, receive any injury, or incur or contract any disability or disease, by reason of such duty or assembly therefor, or who shall without fault or negligence on his part receive any wound or injury incident to and while performing any lawfully ordered duty which shall temporarily incapacitate him from his usual business or occupation, shall during the period of such incapacity, receive the pay provided by section 73 and actual and necessary expenses for care and medical attendance. No claim shall be allowed under this section unless the claimant within thirty days after receiving the injury or contracting the disease or disability upon which the claim is based, notifies in writing the adjutant-general of his intention to make such claim. Under this section no disability shall be considered temporary which continues more than ninety days after the date of receiving the injury or of contracting or incurring the disease or disability, and pay and expenses for care, and medical attendance for more than the said ninety days shall not be allowed. When a claim is made under this section, the claimant shall, within thirty days after receiving the injury or contracting the disease or disability upon which the claim is made, or such further time as the adjutant-general shall grant, submit to the adjutant-general his proof by affidavit or otherwise as the adjutant-general may direct. On examination thereof the adjutant-general may allow or disallow the whole or any part of said claim, or he may refer the same to a medical examiner or to a board of three officers, at least one being a medical officer, to be appointed by the adjutant-general, and such medical examiner or board shall have the same powers to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers, and punish for failure to do so, as is possessed by a general court martial. The finding of the medical examiners or boards shall be subject to the approval of the adjutant-general, who may approve the whole or any part thereof, or he may return the proceedings for revision or for taking further testimony. The adjutant-general may cause the examination of the claimant to be made from time to time by a medical officer or officers, designated for the purpose, and may direct the removal of a claimant to, and his treatment in, any hospital designated by the adjutant-general, and if the claimant refuse to permit any examination herein provided for, or if he refuse to go to such hospital, or to follow the advice given or treatment prescribed for him

therein, he shall thereby forfeit and be barred from all right to any claim or allowance under this section. The amount found due such member by the adjutant-general, either on his own investigation or on the report of the medical examiner or board to the extent approved by him, shall be a charge against and be paid in the same manner provided in section 80, and the adjutant-general shall so certify to the state board of examiners, and if approved by it shall be paid in the same manner as are other claims against the state, out of any moneys in the general fund not otherwise appropriated.

Every member of the active militia who shall be permanently disabled by reason of any wound, injury or disease incurred while in the service of the state, and the widow and children of every such member killed in the service of the state as hereinabove provided, must be suitably provided for [by] the legislative assembly. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432]

§ 1108q. County Commissioners Authorized to Build Suitable Armories, Drill-rooms, etc.

(Section 83.) All boards of county commissioners of the several counties of this state are hereby given power and authority to build or acquire by purchase, lease, gift, or otherwise, suitable armories, drill-rooms, head-quarter offices, for such organizations of the active militia as may be stationed or located therein, and to provide for the maintenance and repair of the same; and such boards of county commissioners may raise money by taxation or otherwise for the purpose of providing suitable armories, drill-rooms or headquarters offices for such organizations of the active militia as may be stationed and located therein in such manner as is by law provided for the erection and maintenance of public buildings and improvements. [Amendments approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108r. Armory Commission—Rent for Armories.

(Section 84.) The adjutant-general, together with two officers of the line of the active militia of or above the grade of captain and two civilians appointed by the Governor for a period of four years unless sooner relieved by proper authority and eligible for reappointment for a like period, shall constitute an armory commission of which the adjutant-general shall be the chairman, whose duty it shall be to exercise general supervision and control over all armories, drill-rooms, headquarters offices, to consult and co-operate with the several boards of county commissioners and to devise effective means of obtaining and maintaining such armories, and to fix, subject to the approval of the Governor, the compensation to be allowed to the respective counties as rent for them; they shall have the power, after consulting and hearing the boards of county commissioners, to determine the administrative question of military suitability and adequate maintenance of all armories, drill-rooms, offices, and headquarters offices. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108s. Donations for Military Purposes.

(Section 85.) The Governor is authorized to accept in the name of the state, donations of lands and buildings to be used for military purposes by the organized militia under such conditions as the donors may nominate; lands and buildings so donated shall be subject to the rules and regulations

prescribed by the armory commission. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108t. Armory Commission may Erect Drill-rooms, Headquarters for Officers, etc.

(Section 86.) Whenever the military fund shall be sufficient to warrant such expenditures, the armory commission may, with the approval and by direction of the Governor erect upon lands owned or leased by the state armories, drill-rooms, headquarters offices or other buildings for military purposes. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108u. Taxation and Revenue.

(Section 87.) For the purpose of raising revenue to defray the current expenses of the active militia, there shall be assessed, levied and collected the same as other state taxes, a tax of one-tenth of one mill upon all property in the state subject to taxation, for the present fiscal year and for each fiscal year thereafter. The revenue thus raised shall be paid into the state treasury and be converted into a special and continuous military fund only, from which, except wherein otherwise specified, shall be paid the expenses authorized by this act; said levy shall be annually made by the state board of equalization and to the extent of the amount thereof shall be deducted from the levy authorized by the Constitution and law for state purposes. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108v. Rules of Evidence in All Courts-martial.

(Section 88.) The rules of evidence in all courts-martial shall follow in general, so far as possible, the common-law rules of evidence as observed by the courts of this state in criminal cases, but a certain latitude in the introduction of evidence and the examination of witnesses by avoidance of restrictive rules is permissible when it is in the interest of the administration of military justice. The accused shall at his own request, but not otherwise, be a competent witness; and his failure to make such request shall not create any presumption against him. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108w. Rights of Accused.

(Section 89.) In all trials before courts-martial the accused shall have the right to demand the nature and cause of the accusation against him, and to be presented with a copy of the charges. He shall have the right of being heard by himself or counsel, or both; and shall have compulsory process for obtaining witnesses in his favor. The officer ordering a general, regimental or garrison court-martial will, at the request of any prisoner, who is to be arraigned, detail as his counsel a suitable officer who shall perform such duties as devolve upon counsel for defendants before civil courts in criminal cases. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108x. Duties and Powers of the Judge Advocate of Court-martial.

(Section 90.) The judge advocate of any court-martial, and any summary court, will summon the necessary witnesses for the trial, and for that purpose shall have authority to issue in the name of the state the necessary subpoenas; and every judge advocate of a court-martial shall have power to issue the like process to compel witnesses to appear and

testify which courts of criminal jurisdiction within this state may lawfully issue. Such rights and process may be served and executed by a military person or persons designated to do so by the judge advocate, or they may be directed to any sheriff, constable or other officer whose duty it shall be to serve or execute the same in the same manner in which like writs or process are served or executed when issued by the civil courts of criminal jurisdiction in this state.

The attendance of witnesses in the military service of the state may be procured by the service of formal subpoena, or by the order of competent military authority; and every person in the military service of the state who being duly subpoenaed or ordered to appear as a witness before a court-martial willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify or produce documentary evidence, shall be deemed guilty of disobedience of orders and punished by a court-martial accordingly; and every person not belonging to the military service of the state who being duly subpoenaed to appear as a witness before a court-martial willfully neglects or refuses to appear or refuses so to qualify, testify, or produce documentary evidence, shall be deemed guilty of a misdemeanor, and prosecuted like other misdemeanors in any court of competent jurisdiction and punished by a fine not exceeding one hundred (\$100) dollars; provided that such witness may plead as a defense that he was not tendered one day's fee and mileage for the journey to and from the place of trial, and providing that all witnesses shall receive the fees prescribed in the supreme judicial court, such amounts to be audited and paid as are other claims against the state, and providing that no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108y. Subpoenas, Writs and Processes.

(Section 91.) Subpoenas and all other writs and process when issued by a general court-martial shall extend to every part of the state, but when issued by other military courts cannot be executed in any county other than in the one in which issued, except they be indorsed by the Governor, or an officer authorized to order a general court-martial in which case they can be executed anywhere in this state. The indorsement shall be, in substance, "Let this process be executed in any county of the state of Montana"; and shall be dated and signed by the officer making it. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1108z. Punishment on Conviction.

(Section 92.) Whenever by any of the articles or sections the punishment or conviction of any military offense is left to the discretion of the court-martial the punishment shall not exceed, in case of officers, dismissal from the service, a forfeiture of all pay and allowances, and fine of two hundred (\$200) dollars and the costs of witnesses, and in the case of enlisted men, thirty days' confinement, dishonorable discharge, forfeiture of all pay and allowances, and a fine of fifty (\$50) dollars and costs of witnesses. Within such maximum limits the Governor may prescribe in the case of enlisted men a lesser limit which a court-martial shall not exceed, and if no such limit be prescribed any fine awarded shall not exceed the amount of forfeiture prescribed in the executive order estab-

lishing maximum limits of punishment for enlisted men in the regular army. But confinement shall in no case be awarded as a punishment except for an offense committed when on duty at any encampment, maneuvers, and field instruction ordered for at least five consecutive days, or when called out by the Governor in case of insurrection, invasion, turmoil, riot, mob, resistance to the laws of the state, or of imminent danger thereof, or when called out in aid of the civil authorities. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109. Warrant of Commitment.

(Section 93.) When the sentence of a court-martial adjudges a fine and costs against any person and such fine and costs has not been fully paid within thirty days after the confirmation thereof, or whenever a person in the military service is ordered confined to await trial or is sentenced to confinement by a court-martial or whenever any person is ordered into confinement under the eighty-sixth article at a place or station not provided with a guard-house or military prison, the Governor, the court or officer ordering the court, or the officer commanding for the time being, as the case may be, shall issue a warrant of commitment directed to the sheriff of the county in which the court-martial was held, directing him to take the body of the person so convicted and confine him in the county jail; and it shall be the duty of the sheriff to take the body of the person so convicted and confine him in the county jail for the time specified in the sentence, or for one day for any fine not exceeding two dollars, and one additional day for every two dollars or fraction thereof above that sum, and one additional day for each two dollars of costs. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109a. Presumption of Jurisdiction of Courts—Liability for Execution of Sentence.

(Section 94.) The jurisdiction of the courts and boards established by this act shall be presumed, and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding.

No action or proceeding shall be prosecuted or maintained against a member of the military forces of this state or officers or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of any fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109b. Officers Authorized to Administer Oaths for Military Purposes.

(Section 95.) Officers of the judge advocate-general's department, judge advocates of courts-martial, and the trial officers in summary courts, are hereby authorized to administer oaths for the purpose of military administration, and shall charge no fee for the same. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109c. Summary Court and Judge Advocate to Make Reports of Cases Tried.

(Section 96.) Each summary court and the judge advocate of each regimental and each garrison court, shall, at the end of each month, make

a report to the adjutant-general of the cases tried, setting forth the offense committed and penalty awarded. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109d. Privileged from Arrest.

(Section 97.) Every person belonging to the active militia of the state shall in all cases, except felony and breach of the peace, be privileged from arrest while going to, remaining at, or returning from any place he may be required to attend for the election of officers or other military duty. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109e. Exemption from Jury Duty and Head Tax.

(Section 98.) Every member of the active militia, and every officer on the retired list shall be exempt from jury duty and from the payment of head tax of every description; provided that every member of the active militia, and officer on the retired list who has served for a period of nine years shall be forever exempt from jury duty and from head tax of every description. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109f. Military Services.

(Section 99.) No organization of the active militia shall perform any voluntary military service except as authorized by this act or by the express order of the Governor. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109g. Military Organization not to Leave or Enter State.

(Section 100.) No organization of the active militia shall leave the state and no military organization of another state, unless acting under the authority of the United States, shall enter the state, except in each case by permission of the commander-in-chief. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109h. Armed Parades Forbidden.

(Section 101.) No body of men, other than the active militia and the troops of the United States, shall associate themselves together as a military company or organization, or parade in public with firearms in any city or town of this state; nor shall any city or town raise or appropriate any money toward arming, equipping, uniforming or in any other way supporting, sustaining or providing drill-rooms or armories for any such body of men; but associations wholly composed of soldiers and soldiers honorably discharged from the service of the United States and the order known as the Sons of Veterans may parade at any time in public with firearms; and students in educational institutions where military science is taught as a prescribed part of the course of instruction, may, with the consent of the Governor, drill and parade with firearms in public under the superintendence of their military instructors. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and punished by a fine not exceeding ten (\$10) dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109i. Uniform, Arms and Equipment.

(Section 102.) The uniform, arms, and equipment of the active militia shall be the same as those of the regular army of the United States. Each

organization of the National Guard and every enlisted man thereof shall be uniformed, armed, and equipped by the state, as is or may hereafter be prescribed or provided by the laws or regulations of the United States for the organized militia, and no member or organization of the active militia, shall adopt, use or wear in the military service of the state any other uniforms, arms or equipment. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109j. Commissioned Officers Shall Provide Themselves With Uniforms, Arms and Equipments.

(Section 103.) All commissioned officers shall provide themselves with such uniforms, arms and equipment as are required of the commissioned officers of the regular army. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109k. Clothes and Military Outfit Exempt from Execution.

(Section 104.) The clothes, arms, military outfit and accoutrements furnished by or through the state to any member of the active militia, and the uniforms, arms and equipment required of commissioned officers shall not be subject to any suit, distress, execution or sale for debt or payment of taxes. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109l. Person Who Wears the Uniform Guilty of Misdemeanor.

(Section 105.) Every person, other than an officer or enlisted man in the active militia of this state or of any other state, or of the United States army, navy, marine corps, or revenue of forest service, or a member of any service of the United States for whom such uniform has been prescribed by proper authority, or inmate of any veterans' or soldiers' home, or a member of the Grand Army of the Republic, United Spanish War Veterans, or of the Sons of Veterans, who at any time wears the uniform of the United States army or navy or active militia of this state, or any part of such uniform, or a uniform or a part of a uniform similar thereto, within the limits of this state, shall be guilty of a misdemeanor, and shall upon conviction be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment; provided, that nothing in this act shall be construed as prohibiting persons in the theatrical profession from wearing such uniform in any playhouse or theater while actually engaged in following such profession, and provided that nothing in this act shall be construed as prohibiting a uniform rank of civic societies parading or traveling in a body or assembling in a lodge-room; and provided further, that whenever the active militia or any part thereof is in active service, or is called into active service, no civic organization or member thereof shall parade or appear in uniform in the locality where said active militia is in service. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109m. Annoying Person on Account of Being Member of National Guard.

(Section 106.) Any person who, either by himself or with another, willfully deprives a member of the National Guard of his employment, or prevents his being employed by himself or another, or obstructs or annoys said member of the National Guard or his employer in respect to his trade,

business, or employment, because said member of said National Guard is such member or dissuades any person from enlistment in the said National Guard by threat of injury to him in case he shall so enlist, in respect of his employment, trade, or business, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five (\$25) dollars nor exceeding five hundred (\$500) dollars, or by imprisonment for not less than ten (10) days nor more than six months in the county jail, or by both such fine and imprisonment. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109n. Association Discriminating Against Members of National Guard.

(Section 107.) No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment, or business of the members thereof, shall by any constitution, rule, by-law, resolution, vote, or regulation, discriminate against any member of the National Guard because of such membership, in respect to the eligibility of such member of the National Guard to membership in such association or corporation, or in respect to his right to retain said last mentioned membership; and any person who aids in enforcing any such provision against a member of the said National Guard with intent to discriminate against him because of such membership, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25) nor exceeding five hundred (\$500) dollars, or by imprisonment in the county jail for a term or not less than ten (10) days nor more than six (6) months or both such fine and imprisonment. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109o. Persons Molesting Officer or Soldier While on Duty.

(Section 108.) If any person interrupts, molests or insults, by abusive words or behavior, or obstructs any officer or soldier while on duty or at any parade, drill or meeting for military improvement, he must immediately be put under guard and kept at the discretion of the commanding officer until the duty, drill, parade or meeting is concluded; and he may commit such person to any police officer, constable or sheriff of the county wherein such duty, drill or meeting is held, who shall detain him in custody for examination or trial before a court having jurisdiction of the place; and any person found guilty of any of the offenses enumerated in this section or of obstructing or interfering with United States forces or troops or any part of the National Guard shall be punished by a fine of not less than (\$10) dollars nor more than five hundred (\$500) dollars, or by imprisonment in the county jail for not less than ten (10) days nor more than six (6) months or by both such fine and imprisonment. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109p. Not to Dispose of Clothes, Arms or Other Military Property.

(Section 109.) The clothes, arms, military outfits, and accoutrements furnished by or through the state to any member of the active militia shall not be sold, bartered, exchanged, pledged, loaned, or given away; and no person not a member of the military forces of this state or of the United States, or duly authorized officer or agent of the state or of the United States, who has possession of any such clothes, arms, military outfit, or accoutrements, so furnished, which have been the subject of any such unlawful

disposition, shall have any right, title, or interest therein; but the same shall be seized and taken wherever found by any officer of the state, civil or military, and shall thereupon be delivered to any commanding officer or other officer authorized to receive the same, who shall make an immediate report to the adjutant-general. The possession of any such clothes, arms, military outfit or accoutrements, by any person not a member of the military forces of the state or the United States shall be presumptive evidence of such sale, barter, exchange, pledge, loan, or gift. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109q. Retention of Property After Demand by Officer.

(Section 110.) Any person who shall sell or offer for sale, barter, exchange, pledge, loan or give away, secrete or retain after demand made by an officer of the state, civil or military, any clothes, arms, military outfits or accoutrements furnished by or through the state to a member of the active militia, or who shall receive by purchase, barter, exchange, pledge, loan or gift, any such clothes, arms, military outfits or accoutrements, shall be guilty of a misdemeanor and punished by a fine of not less than ten (\$10) dollars, nor exceeding one hundred (\$100) dollars, or by imprisonment in the county jail for not less than ten (10) days nor more than six (6) months, or by both such fine and imprisonment. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109r. Responsibility for and Ownership of Property—Bonds of Officers.

(Section 111.) All property furnished by the state shall remain and continue to be the property of the state, to be used for military purposes only, and when not so in use shall be kept in the armories or designated places of deposit. Every officer receiving public property for military use shall be held responsible for the safekeeping and the return of the same when called for; he will account for and make such returns thereof as may be prescribed whenever called upon so to do by the Governor or other proper authority, and every such officer shall, when required by the Governor, give bond payable to the state of Montana in such sum as the adjutant-general may direct. The adjutant-general shall obtain and pay for, from the appropriation or military fund for maintenance of the National Guard, a surety bond or bonds running to the state of Montana covering all the officers of the National Guard of Montana who are responsible to the state for money or military property. Such bonds shall be approved by the commander-in-chief and filed in the office of the adjutant-general.

Any officer, enlisted man or other person, who shall willfully or maliciously destroy, injure or deface any article of military property belonging to the state, or shall use it for other than military purposes, or shall have or retain the same in violation of law or regulations shall be punished by a fine of not less than five (\$5) dollars, nor more than fifty (\$50) dollars, and in case any officer or enlisted man in the National Guard who has at any time through carelessness or intention lost, destroyed, or suffered to be lost or destroyed, any state or government property which has been issued for use, upon conviction thereof in any court, civil or military, an execution shall be issued against him for the value of the property so destroyed, injured or defaced. The money so recovered shall be paid over to the company commander or other officer responsible for the safekeeping

of such property. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109s. Right of Way in Highways for Militia.

(Section 112.) The commanding officer of any portion of the active militia parading or performing any military duty in any street or highway may require any or all persons in such street or highway to yield the right of way to such militia; providing the carriage of the United States mail, the legitimate functions of the police and the progress and operations of the hospital ambulance, fire-engines and fire departments, and apparatus of the insurance patrol shall not be interfered with thereby. All others who shall hinder, delay or obstruct any portion of the active militia whenever parading or performing any military duty, or who shall attempt so to do, shall be guilty of a misdemeanor. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109t. Limits to Camp or Parade—Intoxicants.

(Section 113.) Every commanding officer, when on duty as such, may fix necessary bounds and limits to his camp, or parade, not including a road so as to prevent passing. Whoever intrudes within the limits of the parade, camp or armory, after being forbidden or resists a sentinel who attempts to put him or keep him out of such limits, or in any manner interrupts or molests the orderly discharge of duty by those under arms, or disturbs, hinders, or prevents the passage of troops going to or returning from any duty, may, at the discretion of the commanding officer, be confined under guard not exceeding twenty-four hours. Such authority of an officer commanding a camp may be extended by order of the commander-in-chief to a distance not exceeding one-half mile around such camp; provided, that the owner or owners of the external space within such distance of the camp, and their agents or servants shall not be hindered or prevented from entering upon such space for the purpose of using, occupying, and improving the same, in the same manner in which they used, occupied, and improved the same at the time when the camp was established. The commanding officer of any camp or armory shall prohibit the introduction or sale of or dealing in, beer, wine or any intoxicating liquor, within the limits or extended limits of the camp or within the armory, and he may abate as common nuisances all such sales and introductions. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109u. Misdemeanor of Civil Officer.

(Section 114.) Civil officers named in this act, neglecting or refusing to obey its provisions, shall be guilty of misdemeanor. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109v. Prosecution of Offenses—Fines.

(Section 115.) Offenses against the provisions of this act, except when they are purely military and committed by a person subject to military jurisdiction, may, unless a different remedy is specially provided, be prosecuted by complaint or indictment before a court of competent jurisdiction; and all fines and forfeitures collected under the provisions of this act, the disposition whereof is not otherwise specially provided for, shall be paid into the state treasury and credited to the military fund. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109w. Company By-laws—Penalty for Violations.

(Section 116.) Companies of the active militia may make by-laws, subject to the written approval of the adjutant-general, not repugnant to law, orders or regulations, and fix a sum to be paid by any member of such company for noncompliance therewith not exceeding five (\$5) dollars. Any member who fails to pay such sum so fixed, within thirty (30) days after notification that the same is due, shall be deemed guilty of conduct to the prejudice of good order and military discipline, and punished by a court-martial accordingly; and all forfeitures resulting therefrom shall be paid into the company treasury. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109x. National Guard Association.

(Section 117.) The commissioned officers of the active militia may organize themselves into an association the name of which shall be the National Guard Association of the state of Montana. Such association may adopt a constitution and by-laws not repugnant to law, orders or regulations, and alter and amend the same, and may take and hold such real and personal property as may be necessary for the purposes of the association. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109y. Rules and Regulations.

(Section 118.) The Governor is hereby authorized to make such rules and regulations as he may deem expedient, but such rules and regulations shall conform to this act, and, as nearly as practicable, to those governing the United States army and navy, and when promulgated, shall have the same force and effect as the provisions of this act. The rules and regulations in force at the time of the passage of this act, and not inconsistent herewith, shall remain in force until new rules and regulations are approved and promulgated. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109z. Flags, Devices and Banners.

(Section 119.) No organization of the active militia or of the reserve militia shall while under arms, either for ceremony or service carry any device, banner or flag of any state or nation except that of the United States or that of the state of Montana. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1109zz. United States Articles of War and Army Regulations.

(Section 120.) Whenever any portion of the militia not being in the service of the United States shall be on duty or ordered to assemble for duty by the Governor in time of actual war, insurrection, invasion or rebellion, the articles of war governing the army of the United States and the regulations prescribed for the army of the United States, so far as consistent with this act, and the regulations issued thereunder, shall be in force and regarded as a part of this act until said forces shall duly be relieved from such duty during such state of actual war, insurrection, invasion or rebellion; but no punishment under such rules and articles which shall extend to the taking of life, shall in any case be inflicted until the approval by the Governor of the sentence inflicting such punishment. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1110. Rules and Articles to Govern When Militia on Duty in Service of State.

(Section 121.) Whenever any portion of the militia shall be on duty or ordered to assemble for duty in the service of this state in accordance with this act, except as provided in the preceding section, the following rules and articles shall govern:

The word "officer," as used herein, shall be understood to designate commissioned officers; the word "soldier" shall be understood to include noncommissioned officers, musicians, artificers, privates, and other enlisted men, and the convictions mentioned therein shall be understood to be convictions by a court-martial.

Article 1: These rules and articles shall be read to every enlisted man at the time of, or within six days after his enlistment, and he shall thereupon take an oath or affirmation in the following form: "I, A. B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America, and the state of Montana; that I will serve the State honestly and faithfully against all enemies whomsoever; and that I will obey the orders of the President of the United States and the Governor of the State of Montana and the orders of the officers appointed over me, according to the rules and articles governing the National Guard of Montana, so help me God."

This oath may be taken before any commissioned officer of the National Guard of Montana.

Article 2: Every officer who knowingly enlists or musters into the military service any minor over the age of eighteen years without the written consent of his parents or guardians, or any minor under the age of eighteen years, or any insane or intoxicated person, or any deserter from the military or naval service of the United States or of the state of Montana, or any person who has been convicted of any infamous offense, shall upon conviction, be dismissed from the service, or suffer such other punishment as a court-martial may direct.

Article 3: Any officer who knowingly musters as an enlisted man a person who is not an enlisted man shall be deemed guilty of knowingly making a false muster, and punished accordingly.

Article 4: Any person who takes money, or other thing, by way of gratuity, or mustering regiment, troop, battery or company, or signing muster-rolls, shall be dismissed from the service.

Article 5: Every officer who knowingly makes a false return to any of his superior officers, authorized to call for such returns, of the state of the regiment, troop, or company, or garrison under his command; or of the arms, ammunition, clothing or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be dismissed.

Article 6: Every officer commanding a troop, battery, or company, is charged with the arms, accoutrements, ammunition, clothing or other military stores belonging to his command, and is accountable in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.

Article 7: Every officer who signs a false certificate, relating to the absence or pay of an officer or enlisted man shall be dismissed from the service.

Article 8: Any officer who knowingly makes a false muster of man or horse or who signs, or directs, or allows the signing of any muster-roll,

knowing the same to contain a false muster, shall, upon proof thereof by two witnesses, before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the state of Montana.

Article 9: Any officer, who, willfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States or the state of Montana, shall make good the loss or damage, and be dismissed from the service.

Article 10: Any enlisted man who sells, or willfully or through neglect wastes the ammunition delivered out to him shall be punished as a court-martial may direct.

Article 11: Any enlisted man who sells, or through neglect loses or spoils his horse, arms, clothing, or accoutrements, shall be punished as a court-martial may adjudge, subject to such limitations as may be prescribed by the commander-in-chief.

Article 12: Any officer or enlisted man who behaves himself with disrespect toward his commanding officer shall be punished as a court-martial may direct.

Article 13: Any officer or enlisted man who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon, or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer, shall suffer such punishment as a court-martial may direct.

Article 14: Any officer or enlisted man who begins, excites, causes, or joins in any mutiny or sedition, in any troop, battery, company, party, post, detachment, or guard, shall suffer such punishment as a court-martial may direct.

Article 15: Any officer or enlisted man who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition does not, without delay, give information thereof to his commanding officer, shall suffer such punishment as a court-martial may direct.

Article 16: All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his own or another corps, regiment, troop, battery, or company, and to order officers into arrest, and noncommissioned officers and enlisted men into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or noncommissioned officer, or draws a weapon upon him, shall be punished as a court-martial may direct.

Article 17: Any officer who thinks himself wronged by the commanding officer of his regiment, separate battalion, or separate company, and, upon due application to such commander, is refused redress, may complain to the commander-in-chief. The commander-in-chief shall examine into said complaint and take proper measure for redressing the wrong complained of.

Article 18: Any enlisted man who thinks himself wronged by any officer may complain to the commanding officer of his regiment, separate battalion, or separate company, who shall examine into such complaint, and take proper measures for redressing the wrong complained of. Either party may appeal from such action to a general court-martial; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the

party appealing shall be punished at the discretion of said general court-martial.

Article 19: Any enlisted man who absents himself from his troop, battery, company, or detachment, without leave from his commanding officer shall be punished as a court-martial may direct.

Article 20: Any officer or enlisted man who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court-martial may direct.

Article 21: No enlisted man belonging to any regiment, troop, battery, or company shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability, or leave of absence. Every enlisted man found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

Article 22: Every noncommissioned officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

Article 23: Every officer who is found drunk on his guard, party, or other duty, shall be dismissed from the service. Any enlisted man who so offends shall suffer such punishment as a court-martial may direct.

Article 24: Any sentinel who is found sleeping upon his post, or leaves it before he is regularly relieved, shall suffer such punishment as a court-martial may direct.

Article 25: Any officer or enlisted man who quits his guard, platoon or division without leave from his superior officer except in a case of urgent necessity, shall be punished as a court-martial may direct.

Article 26: Any officer, who by any means whatsoever, occasions false alarms in camp, garrison or quarters, shall suffer such punishment as a court-martial may direct.

Article 27: Any officer or enlisted man who misbehaves himself before the enemy, runs away or shamefully abandons any fort, post or guard which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post of colors to plunder or pillage, shall suffer such punishment as a court-martial may direct.

Article 28: Every enlisted man who deserts the service of the state of Montana, shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such enlisted man shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

Article 29: Any officer who, having tendered his resignation, quits his post, or proper duties, without leave and with intent to remain permanently absent therefrom, prior to due notice of acceptance of same, shall be deemed and punished as a deserter.

Article 30: Any officer or enlisted man who advises or persuades any other officer or enlisted man to desert the service of the state of Montana, shall suffer such punishment as a court-martial may direct.

Article 31: All officers and enlisted men are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, either in walks or trees, parks, warrens, fish-ponds, houses, gardens, grain fields, inclosures or meadows, or maliciously destroys any property whatsoever belonging to the inhabitants of the United States or of the state of Montana, shall, besides such penalties as he may be liable to by law, be punished as a court-martial may direct.

Article 32: Any person in the military service of Montana who makes, or causes to be made any claim against the United States or the state of Montana, or any officer thereof, knowing such claim to be false and fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof for approval or payment any claim against the United States or state of Montana, or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud the state of Montana by obtaining, or aiding others to obtain, the allowance or pay of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against the state of Montana or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other paper, knowing the same to contain any false or fraudulent statement; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the state of Montana, or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false, or

Who, for the purpose of obtaining, or aiding others to obtain the approval, allowance, or payment of any claim against the state of Montana, or any officer thereof, forges, or counterfeits, or procures or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures, or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody, or control of any money or other property of the state of Montana, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any papers certifying the receipt of any property of the state of Montana, furnished or intended for the military services thereof, makes or delivers to any person, so writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the state of Montana; or

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence, stores, money, or other property of the state of Montana, such soldier, officer, or other person not having lawful right to sell or pledge the same:

Shall, on conviction thereof, be punished by fine or imprisonment, or by both such fine and imprisonment, or such other punishment as the court-martial may adjudge, or by any or all of said penalties. And if any per-

son, being guilty of any of the offenses aforesaid, while in the military service of the state of Montana, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentenced by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

Article 33: Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the military service of the state of Montana.

Article 34: All crimes, not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the military code or laws of the state of Montana, are to be taken cognizance of by a general, or a regimental, garrison, or field officers' court-martial, according to the nature and degree of the offense and punished at the discretion of such court, and such manner as the court may prescribe.

Article 35: All retainers to the camp, and all persons serving in the National Guard of Montana in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war, and the laws of the state of Montana, and of the United States of America.

Article 36: All officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their sabres by the commanding officer. Any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service.

Article 37: Soldiers charged with crimes shall be confined until tried by court-martial or released by proper authority. Such confinement may be in the guard-house, or any county jail, or other prison of the state of Montana.

Article 38: No jailer, sheriff, or keeper of any prison in the state of Montana shall refuse to receive or keep any prisoners committed to his charge by any officer of the National Guard of Montana; provided, the officer commanding such prisoner shall, at the same time deliver an account in writing, signed by himself, of the crime charged against the prisoner.

Article 39: Every officer of the National Guard of Montana to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him; and, if he fails to make such report, he shall be punished as the court-martial may direct.

Article 40: Any officer, who presumes, without proper authority to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

Article 41: When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial as soon as possible, not exceeding altogether thirty days after a copy of charges is delivered to him. If a copy of the charges is not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest under the provisions of this section may be tried,

whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

Article 42: The commanding officer of the National Guard of Montana, who is the adjutant-general, may appoint general court-martial whenever necessary. But when the commander of the National Guard of Montana is the accuser or prosecutor of any officer in the National Guard of Montana, the court shall be appointed by order of the Governor; and its proceedings and sentence sent direct to the Governor by the judge advocate-general, for his approval or orders in the premises.

Article 43: In time of war the commander of a brigade, or of a separate regiment of the National Guard of Montana shall be competent to appoint a general court-martial. But when such commanding officer is the accuser or prosecutor of any person under his command, the court shall be appointed by the next higher commander.

Article 44: With respect to the appointment, organization and procedure before all military courts in the state of Montana, the provisions of the articles of war of the United States for the time being, shall govern, except that such changes in the phraseology thereof shall be made as to make the same applicable to the National Guard of Montana instead of the army of the United States.

Article 45: General courts-martial in the National Guard of Montana may imprison persons convicted either in the penitentiary of the state of Montana or any jail or prison in the state of Montana, or administer any other punishment usual or customary under the laws and usages of the army of the United States.

Article 46: When an officer is dismissed from the service of the National Guard of Montana for cowardice or fraud, the sentence shall further direct that the crime, punishment, name and place of abode of the delinquent, shall be published in the newspapers in and about the camp, and in the county from which the offender came, or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.

Article 47: No person shall be liable to be tried and punished by general court-martial for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless, by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period. No person shall be tried or punished by a court-martial for desertion in time of peace, and not in the face of an enemy committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the state of Montana, in which case the time of his absence shall be excluded in computing the period of the limitation; provided, that said limitation shall not begin until the end of the term for which said person was mustered into the service of the state of Montana.

Article 48: No sentence of a court-martial shall be carried into execution until the same shall have been approved by an officer ordering the court or by the officer commanding for the time being.

Article 49: In time of peace no sentence of a court-martial directing the dismissal of an officer shall be carried into execution until it shall have been confirmed by the Governor.

Article 50: No sentence of a court-martial, either in time of peace, or in time of war, respecting a general officer shall be carried into execution until it shall have been confirmed by the Governor.

Article 51: All sentences of a court-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the Governor is not required by the laws of this state.

Article 52: Every officer who is authorized to order a general court-martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of death, or of the dismissal of an officer. Every officer commanding a regiment or garrison in which a regiment or garrison court-martial may be held shall have power to pardon or mitigate any punishment which such court may adjudge.

Article 53: Every judge advocate, or person acting as such, at any general court-martial, shall, with such expedition as the opportunity of time and distance of place may permit, forward the original proceedings and sentence of such court to the judge advocate-general of the National Guard of Montana, in whose office they shall be properly preserved.

Article 54: Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court.

Article 55: In all matters relating to the rank, duties and rights of officers, the same rules and regulations shall apply in the National Guard of Montana as those provided for the army of the United States.

Article 56: Every judge advocate of a court-martial shall have power to issue process or writs of subpoena to compel witnesses to appear and testify, which courts of criminal jurisdiction within the state of Montana may lawfully issue.

Article 57: Every person not belonging to the National Guard of Montana who, being duly subpoenaed to appear as a witness before a general court-martial of the National Guard of Montana, willfully neglects or refuses to appear, or refuses to qualify as a witness, to testify, or refuses to produce documentary evidence which such person may have been legally subpoenaed to produce, when it is in his power to produce the same, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in some court of criminal jurisdiction; and it shall be the duty of the Attorney General of the state of Montana, on the certification of the facts to him by the general court-martial, or the judge advocate thereof, to file an information against and prosecute the person so offending, and the punishment of such person on conviction, shall be a fine of not less than fifty (\$50) dollars, nor more than five hundred (\$500) dollars or imprisonment in a county jail not exceeding four months, or both such fine and imprisonment, at the discretion of the court.

Article 58: The foregoing articles shall be read and published once in every six months, to every garrison, regiment, troop or company in the service of the state of Montana, and shall be duly observed and obeyed by all officers in said service. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1110a. Rate of Passage to be Charged Troops and Officers on Duty.

(Section 122.) From and after the passage and approval of this act all railroads or railroad companies operating and doing business in the

state of Montana shall carry the troops of the state of Montana, or officers or enlisted men thereof, while in the performance of their military duties within the state, at a rate of not more than one cent per mile. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1110b. Customs and Usage of United States Army to Govern.

(Section 123.) All matters relating to the organization, discipline and government of the National Guard not otherwise provided for in this act or in the general regulations, shall be decided by the custom and usage of the United States army. [Amendment approved March 13, 1911; Laws 1911, c. 145, p. 432.]

§ 1110c. Repealing Clause.

(Section 124.) That sections 1045 to 1110 inclusive, of the Revised Codes of 1907, and all acts and parts of acts in conflict herewith be and the same are hereby repealed. [Approved March 13, 1911; Laws 1911, c. 145, p. 432.]

(Section 125.) This act [§§ 1045-1110c herein] shall take effect immediately upon its passage and approval by the Governor. [Approved March 13, 1911; Laws 1911, c. 145, p. 432.]

INSANE AND INDIGENT.

§ 1111. Board of Commissioners for Insane.

(Section 1.) The management, control and supervision of the State Insane Asylum located at Warm Springs, county of Deer Lodge, state of Montana, is hereby vested in the state board of commissioners for the insane which consists of the Governor, the Secretary of State, and the Attorney General, of which the Governor is president and the Secretary of State the secretary. [Amendment approved March 6, 1913; Laws 1913, p. 110.]

§ 1112. Powers and Duties of Commissioners.

(Section 2.) The powers and duties of such board are as follows:

(1) To make rules and regulations for its own government not inconsistent with the laws of the state.

(2) To prescribe the duties of the superintendent of the State Insane Asylum.

(3) To provide for the care, custody, maintenance and treatment of the insane in a safe and suitable building or buildings for that purpose which is known as the State Insane Asylum.

(4) To make inquiry into the condition of the asylum and to see that the inmates are properly cared for in respect to clothing, food, medical attendance, and that they have proper apartments.

(5) To make a report biennially to the legislative assembly giving a statement of the receipts and expenditures, the conditions of the asylum, the number of inmates under treatment, and such other matters as may be advisable.

(6) To keep a record of their proceedings which must be open at all times to the inspection of any citizen. [Amendment approved March 6, 1913; Laws 1913, p. 110.]

§ 1113. Superintendent of Asylum and Assistant.

(Section 3.) A superintendent of the State Insane Asylum and an assistant superintendent, who shall be regularly licensed physicians of the

state of Montana, shall be appointed by the Governor and such appointments must be transmitted to and approved by the Senate. The tenure of office of the appointees shall be for a period of four years from the date of appointment and until their successors have been appointed and qualified. The salary of the superintendent is hereby fixed at the sum of four thousand (\$4,000) dollars per year, the salary of the assistant superintendent at three thousand (\$3,000) dollars per year, payable in monthly installments of one-twelfth each at the end of each and every month. They shall be subject to removal by the state board of commissioners for the insane at any time for misfeasance, nonfeasance or malfeasance in office, but before the superintendent or the assistant superintendent to be so removed, formal charges in writing must be preferred and the superintendent or the assistant charged shall be given opportunity to appear and defend himself against any such charges. When charges shall have been preferred asking the removal of the superintendent or the assistant superintendent, notice of the time and place of hearing of said charges shall be served upon the accused at least five days prior to the day set for the hearing, provided, however, that when such charges have been preferred, the state board of commissioners for the insane shall have the power and authority to suspend the accused until after the determination of the charges preferred against him. [Amendment approved March 6, 1913; Laws 1913, p. 110.]

§ 1114. Powers of Superintendent—Medical Assistants.

(Section 4.) The superintendent shall have immediate control and charge of the State Insane Asylum, and the inmates thereof, subject, however, to the orders, rules and regulations made and prescribed by the state board of commissioners for the insane and not inconsistent with this act, and said superintendent shall appoint additional medical assistants, whose appointment shall be subject to the approval of the state board of commissioners for the insane, and whose salaries shall be fixed by said board. [Amendment approved March 6, 1913; Laws 1913, p. 111.]

§ 1115. Oath of Office and Bonds.

(Section 5.) The superintendent and assistant superintendent before entering upon the discharge of their duties of their respective positions, shall take the constitutional oath of office and file bonds in such sums as shall be fixed by the state board of commissioners for the insane, to be approved by the said board. [Amendment approved March 6, 1913; Laws 1913, p. 111.]

§§ 1116-1120. [Repealed.]

By act approved March 6, 1913; Laws 1913, c. 57, p. 112.

§ 1144. Compensation to Physicians for Examining Insane Persons.

The physicians attending each examination of an insane person are allowed five (\$5) dollars and in addition his actual traveling expenses not to exceed the sum of ten cents for each and every mile actually and necessarily traveled by said physician in attending said examination, and in returning to his home therefrom, to be paid by the county treasurer of the county, where the examination was had, on the order of the board of county commissioners.

The clerk of the district court or the chairman of the board of county commissioners, if the hearing be had before him, must give to such physi-

cian a certificate, under seal, of travel and attendance, which shall entitle him to receive the amount therein stated, from the county treasurer. [Amendment approved March 4, 1911; Laws 1911, p. 152.]

§ 1147a. State Hospital for Inebriates.

(Section 1.) There shall be established at the State Insane Asylum at Warm Springs, a department of said institution, which shall be called the State Hospital for Inebriates, and shall be used for the detention, care and treatment of all persons suffering from mental affliction occasioned by the use of drugs or intoxicants. [Approved March 11, 1911; Laws 1911, c. 139, p. 398.]

§ 1147b. Commissioners for Insane to Control Hospital.

(Section 2.) The state board of commissioners for the insane shall have supervision and control of said state hospital for inebriates, and the officers, contractors and employees of the State Insane Asylum shall constitute the officers, contractors and employees of said hospital for inebriates, and shall receive no additional compensation for their services in connection with said hospital. [Approved March 11, 1911; Laws 1911, c. 139, p. 398.]

§ 1147c. Notice of Opening of Hospital.

(Section 3.) When provisions shall have been completed for said hospital for inebriates and the same is ready for occupancy, the state board of commissioners for the insane shall cause a written notice to be mailed to every judge of the district court and to every clerk of the district court in the state, notifying them that said hospital is open for the reception of patients. [Approved March 11, 1911; Laws 1911, c. 139, p. 398.]

§ 1147d. Patients that may be Admitted.

(Section 4.) Said hospital for inebriates shall receive all patients regularly committed to it who are dipsomaniacs, inebriates, or who are addicted to the excessive use of morphine, cocaine, or other narcotic drugs, and who shall have been regularly examined and found of unsound mind as a result of the use of any such intoxicant or drug. [Approved March 11, 1911; Laws 1911, c. 139, p. 399.]

§ 1147e. Applications for Commitment to Hospital.

(Section 5.) Applications for commitment to said hospital for inebriates shall be made to the judge of the district court of the district which embraces the county in which the person whom it is proposed to commit resides, and said application may be made in person by any dipsomaniac, inebriate, or user to excess of morphine, cocaine, or other narcotic drug, or may be made against any such person by any other person. [Approved March 11, 1911; Laws 1911, c. 139, p. 399.]

§ 1147f. Examination of Applicant and Commitment—Dismissal of Patient.

(Section 6.) On presentation of the application provided for in section 5 hereof, unless made in person by an inebriate, dipsomaniac, or user to excess of a narcotic drug, the judge shall issue an order, which may be served by any peace officer, directing him to bring the accused person before him for examination, and on the appearance of the accused the judge shall proceed in the manner now provided by law for the examination of insane persons. The accused may be represented by counsel and the judge

may, if he deems it necessary, require the county attorney of the county where the hearing is had to attend and assist in such hearing. In case said application be voluntarily or involuntarily made and said judge shall determine that the accused is a proper person to be committed to said hospital for inebriates, he shall make the order committing him thereto; otherwise he shall be discharged. The term of detention and treatment shall be until the patient is cured, provided, however, that the superintendent of such hospital may discharge any person committed to said hospital when satisfied that such person is not receiving substantial benefit from further hospital treatment. [Approved March 11, 1911; Laws 1911, c. 139, p. 399.]

§ 1147g. Costs of Examination and Commitment.

(Section 7.) All costs and expenses incurred in the arrest and examination and the costs and expenses incurred in taking the accused to said hospital shall be paid in the manner now provided by law for the arrest, examination and commitment of persons to the State Insane Asylum. [Approved March 11, 1911; Laws 1911, c. 139, p. 399.]

§ 1147h. Charges for Maintenance and Treatment of Patient.

(Section 8.) The board of commissioners for the insane shall fix the per capita monthly allowance which may be charged by said hospital for the care, treatment and maintenance of each patient therein, which shall be certified by the superintendent to said board of commissioners for the insane and paid out in the manner now provided by laws applicable to the State Insane Asylum, unless provisions shall be made for the conduct of said institution exclusively as a state institution, in which event such patients shall be cared for at the expense of the state and as directed by the state board of commissioners for the insane. [Approved March 11, 1911; Laws 1911, c. 139, p. 400.]

§ 1147i. Financial Condition of Patient—Liability of Relatives.

(Section 9.) Whenever an examination or hearing for committal to the State Hospital for Inebriates is had before the judge, or chairman of the board of county commissioners, and the person adjudged and ordered to be confined in the State Hospital for Inebriates it shall be the duty of the judge or person before whom the hearing is had to take evidence as to the financial worth of said person committed to the State Hospital for Inebriates, which evidence shall be reduced to writing and filed as provided in the preceding section, and if it appears from said evidence that said person committed to the State Hospital for Inebriates has any means, money or property out of which the expenses of his maintenance in the State Hospital for Inebriates, or any part thereof, could be paid, it shall be the duty of the judge, or person before whom the hearing is had, to issue a citation to the parties in possession of his property, and to the relatives of said person committed to the State Hospital for Inebriates, if any there be in the county where said person committed to the State Hospital for Inebriates resided, citing them to appear and show cause why a guardian should not be appointed for said person committed to the State Hospital for Inebriates, and why said guardian should not be ordered to pay the costs of the maintenance of said person committed to the State Hospital for Inebriates, or so much thereof as his means will permit, which citation shall be served and all proceedings thereunder conducted as provided in Part III, Title

XII, Chapter XXV, of the Revised Codes of 1907; and if it appear to the court that said person committed to the State Hospital for Inebriates has property that can be applied toward his maintenance it shall be the duty of the court to appoint a guardian whose duty shall be to apply such property, or so much thereof as may from time to time be necessary, to the cost of the care and maintenance of such person committed to the State Hospital for Inebriates while an inmate of the State Hospital for Inebriates, and it shall be the duty of the court to make an order to that effect, and to cause certified copies of such order appointing a guardian, and of the final report of such guardian when made, to be by the clerk of the court forthwith forwarded to the state board of commissioners for the insane.

The husband, wife, father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters, of a person committed to the State Hospital for Inebriates, if they or either of them, be of sufficient ability, in the order named, shall be liable for the care, support and maintenance of such person committed to the State Hospital for Inebriates in the said State Hospital for Inebriates to which he has been or may be hereafter committed. And it shall be the duty of the judge, or the chairman of the board of county commissioners if the hearing be had before him, during any such examination of any person to ascertain the name and addresses of the husband, wife, father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters, of such person, and at the conclusion of such examination to cause such names and addresses to be certified to the state board of commissioners for the insane. [Approved March 11, 1911; Laws 1911, c. 139, p. 400.]

§ 1147j. Retention and Release of Patient.

(Section 10.) All persons so committed may be detained in said hospital two years; but when it shall appear to the superintendent of said hospital for inebriates that any person held in said hospital will not continue to be subject to dipsomania or inebriety, or will be sufficiently provided for by themselves or their guardian, relatives, or friends, the superintendent may issue to such person a permit to be at liberty, upon such conditions as he may deem best, and he may revoke said permit at any time previous to its expiration. The violation by the holder of such permit of any of the terms or conditions of the same shall of itself make said permit void.

When any permit granted under the provisions of the preceding section has become void in any manner the superintendent may issue an order authorizing the arrest of the holder or holders of such permit and their return to the hospital, and such order of arrest may be served by any officer authorized to serve criminal process in any county in this state. Any person at liberty from the hospital upon a permit, as aforesaid, may voluntarily return to the hospital and put himself in the custody of the superintendent. The holder of such permit when returned to said hospital as aforesaid, whether voluntary or otherwise, shall be detained therein according to the term of his original commitment. [Approved March 11, 1911; Laws 1911, c. 139, p. 401.]

§ 1147k. Rules and Regulations of Hospital.

(Section 11.) The rules and regulations in force at the State Insane Asylum shall be the rules and regulations for said State Hospital for Inebriates. [Approved March 11, 1911; Laws 1911, c. 139, p. 402.]

§ 11471. Furnishing Liquor or Drugs to Patient a Felony.

(Section 12.) Any person who shall furnish any patient of said hospital for inebriates, any intoxicating liquor, or narcotic drug, except upon the written prescription of the superintendent, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for a period of not less than six months nor more than five years, or by fine of not less than five hundred (\$500) dollars nor more than one thousand (\$1000) dollars. Any person who shall knowingly furnish any intoxicating liquor or narcotic drug to one who has been discharged from said hospital as cured, except upon the written prescription of a reputable practicing physician, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50) and not more than one thousand (\$1000) dollars. [Approved March 11, 1911; Laws 1911, c. 139, p. 402.]

§§ 1158-1160. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 102.

§ 1165. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 102.

§ 1163. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 102.

§ 1171. Feeble-minded Persons—Admission to School for Deaf and Blind.

All feeble-minded persons, resident in the state of Montana and qualified after the general manner prescribed in section 1168 of this act, shall be admitted into this school; provided, that every such person shall be capable, in the judgment of the trustees, of at least some mental, moral or physical training, such as falls within the proper function of a school, as distinct from an asylum. To the end that the board of trustees may arrive at some definite method of judging such cases; they are hereby empowered to ascertain and establish certain tests, which tests shall be thoroughly and impartially applied to each case before final admission into the school, and it shall be the object of said tests to ascertain in each case if there be any capacity for mental, moral or physical training; and provided further, that as soon as possible in the judgment of the board of trustees, by and with the consent of the state board of education, a separate building and premises, adjoining yet distinct from those of the deaf and blind shall be provided for such feeble-minded persons, which building and premises shall be more especially adapted to the peculiar needs of said feeble-minded class of persons. The said feeble-minded department shall be under the general control and supervision of said board of trustees and superintendent; but the trustees, after consultation with the superintendent and at his request, may appoint an assistant superintendent, together with especially trained teachers and attendants, whether in their judgment said feeble-minded department herein provided for shall seem to need such additional attention and supervision; and provided that the said officers are hereby authorized to retain in the care of said school for life such feeble-minded pupils as have passed the age of twenty-one years and are not fit mentally to make their way or become useful members of society. The authorities of said school are directed to establish a farm colony for the feeble-minded on the ranch belonging to the school. The adults feeble-minded under skilled supervision shall be required, by their labor, to contribute as far as possible

to their own support and to the support of the school. [Amendment approved March 10, 1909; Laws 1909, p. 207.]

§ 1230a. Legislative Reference Bureau in State Library.

(Section 1.) There shall be established and conducted in connection with the Historical and Miscellaneous Department of the State Library a Legislative Reference Bureau. The object of said bureau shall be to gather and make available such information as shall aid the members of the legislature in the discharge of their duties, and to render assistance in the drafting of bills. The material collected shall consist in part of indices to bills of previous Montana legislatures; information as to what legislation has been enacted upon important subjects in other states, the opinion of experts in regard to various phases of important legislation and legal data as to the constitutionality and interpretation of laws.

(Section 2.) To carry out the provisions of this act the librarian of the Historical and Miscellaneous Department of the State Library is hereby authorized and empowered to employ his second assistant as a clerk for such purpose and to increase his present salary from \$900 per year to \$1200 per year.

(Section 3.) There is hereby appropriated out of the general fund of the state treasury the additional sum of three hundred dollars (\$300) per year, payable semi-annually for the purpose of purchasing material for any general maintenance of the Legislative Reference Bureau. [Approved March 4, 1909; Laws 1909, c. 65, p. 79.]

§ 1249.

Powers of various state institutions to accept gifts, devises, or bequests. In re Beck's Estate, 44 Mont. 561, 581, 121 Pac. 784.

Character of the State Orphans' Home. In re Beck's Estate, 44 Mont. 561, 572, 121 Pac. 784.

§§ 1251-1258. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 102.

§ 1261.

The State Orphans' Home is not, strictly speaking, an educational one. In re Beck's Estate, 44 Mont. 561, 573, 121 Pac. 784.

§§ 1262-1264. [Repealed.]

By act approved March 4, 1909; Laws 1909, c. 73, p. 102.

The State Orphans' Home, at Twin Bridges, in Madison county, was created and established under the provisions found in Part III, Chapter IV of Article III of the Political Code of 1895, and acts amendatory thereto, brought forward into the Revised Codes as sections 1249-1280, inclusive, and thereafter further amended by the above act, approved March 4, 1909; an act which deals exclusively with the subject of the control of the state institutions. In re Beck's Estate, 44 Mont. 569, 121 Pac. 784, 1057.

§ 1285. Oath and Bond of Managers of Soldiers' Home.

Before entering upon his duties each member of the board of managers shall take the oath prescribed by law, and shall execute to the state of Montana a bond in the penal sum of one thousand dollars, to be approved by the Governor and filed in the office of the Secretary of State, conditioned for the faithful performance of his duties and the honest and faithful disbursement of and accounting for, all moneys and property which may come into his hands as such manager. [Amendment approved February 11, 1911; Laws 1911, p. 24.]

§ 1287. Soldiers' Home—Meeting of Managers.

The board of managers of the Soldiers' Home shall hold three regular meetings each year, to wit: on the second Tuesday of March, July and

November in each year; and they may have special meetings on the call of the president and one other member of the board for the transaction of such business as may be stated in the call. Three members of the board shall constitute a quorum for the transaction of business. [Amendment approved February 17, 1909; Laws 1909, p. 25.]

§ 1288. Appointment of Officers for Home—Rules and Regulations.

That the board of managers shall appoint a commandant of the home, who shall be a resident of the state, and shall have served in the army or navy of the United States during the late war of the Rebellion, and shall have received an honorable discharge therefrom. They shall formulate and publish all necessary rules and regulations for the government of the home and its inmates, beneficiaries, officers and employees, and shall provide penalties and forfeitures for violation of said rules and regulations, to be reasonably and impartially enforced by the commandant of the home, subject to appeal to the board of managers. All subordinate officers, such as may be provided for by the rules and regulations of the home, shall preferably be selected from residents of the state who served in the army or navy of the United States during the war of the Rebellion, and received honorable discharge therefrom. The salaries of the commandant and all subordinate officials shall be fixed by said board of managers; provided, that the salary of the commandant shall not exceed one hundred and twenty-five dollars per month, and for such other employees as may be necessary the amounts so paid shall not exceed such reasonable compensation as is paid for like services in similar institutions. Any such subordinate official or employee may be suspended by such commandant for inefficiency or misconduct, but in case of suspension of such official or employee, a statement of the case shall be reported by the commandant to the said board, who shall upon application offer such official or employee a hearing; the action of the board thereon shall be final. [Amendment approved February 17, 1909; Laws 1909, p. 25.]

§ 1290. Who Eligible to Admission.

Any soldier, sailor, or marine who served in the army or navy of the United States during the late "Civil War," or in the Mexican war, or in the late war with Spain, or who within the borders of the territory of Montana, served in the Sioux war of 1876, or the Nez Perce war, of 1877, and received honorable discharge therefrom, who at the time of admission is an invalid by reason of disease contracted, wounds received, or by reason of other disability, shall be eligible to admission to the benefits of the home under the rules and regulations prescribed by the board of managers thereof on the certificate of disability by a county commissioner and the county physician of the county in which the applicant may reside; and the transportation of such applicant to the said Soldiers' Home shall be a proper county charge and be paid by said county if the applicant is unable to pay the same. Provided, that the benefits of said home shall not be extended to anyone who has not resided within the state of Montana for a period of one year next preceding the date of his application, or to anyone who has not resided within the county from which he asks to be sent to the home for the period of three months from the date of his application, nor to anyone convicted of a felony or of a crime showing moral turpitude, nor shall anyone who has been an habitual drunkard be received without suffi-

cient evidence of subsequent good conduct and reformation of character as may be satisfactory to the said board of managers. [Amendment approved March 14, 1913; Laws 1913, p. 425.]

§ 1291. Admission of Wives or Widows of Soldiers.

The board of managers of the Soldiers' Home is authorized and empowered to admit to the privileges of the home, under such rules as the board may prescribe, the wives or widows of soldiers or sailors who are inmates or who may be or may have been eligible to admission as inmates and who were married prior to the year 1902. [Amendment approved March 14, 1913; Laws 1913, p. 425.]

§ 1293.

Power of State Orphans' Home to take by will. See note post, § 4725.

§ 1295. Compensation of Managers.

Said board of managers shall receive as compensation for their services the sum of five dollars per day and their actual traveling expenses incurred while attending the meetings or in attending to the transaction of any business by and under the direction of the said board of managers. [Amendment approved February 17, 1909; Laws 1909, p. 26.]

§ 1305. Chaplain of Soldiers' Home.

The board of managers shall select and appoint a chaplain for the Soldiers' Home, who must be a regularly ordained minister of the gospel and who shall hold divine services at the Soldiers' Home at least twice a month, and who shall also conduct the burial services upon the death of any of the inmates of the home. He shall receive as compensation for such services the salary of not less than ten (\$10) dollars per month nor more than fifteen (\$15) dollars per month, to be determined by the board of managers, which salary shall be paid out of the general appropriation fund for the maintenance of such home. [Amendment approved February 25, 1909; Laws 1909, p. 35.]

§ 1306. Farmers' Institute.

The board of administration of the Farmers' Institutes, as provided for in this act, shall consist as follows: The Governor of the state, the president of the Montana Agricultural College and the director of the Montana Experimental Station, all of whom shall be ex-officio members. Members of such board of administration shall be designated the "Directors of the Montana Farmers' Institute," and shall be authorized to hold institutes for the instruction of the citizens of this state in the various branches of agriculture, and shall prescribe such rules and regulations as they may deem best for organizing and conducting the same. Such institutes shall be held at least once in each county in each year and at such times and places as the directors may designate; provided the requirements of the board of administration have been complied with, such as county institutes or local organizations providing a suitable hall, lighting and heating the same, and bearing necessary advertising expense. The directors may employ an agent or agents to perform such work in organizing or conducting said institutes as they may deem best. A course of instruction at such institutes shall be so arranged as to present to those in attendance the results of the most recent investigations in theoretical and practical agriculture. [Amendment approved February 11, 1909; Laws 1909, p. 9.]

§ 1307. [Repealed.]

By act approved February 11, 1909; Laws 1909, p. 9.

STATE FAIR**§ 1311. Establishment of State Fair.**

(Section 1.) For the promotion of the public welfare and in order to give prominence and publicity to the resources of the state of Montana, there is hereby established a state institution to be known and designated as, "The Montana State Fair." [Amendment approved February 23, 1911; Laws 1911, p. 80.]

§ 1312. Purpose of Fair—Time for Holding.

(Section 2.) The objects and purposes of said institution shall be to encourage the location and settlement of the public lands within this state, and to encourage immigration and capital in aid of the further development of our natural resources; and to better disseminate knowledge concerning the growth, prosperity, and possibilities of agriculture, stock-raising, horticulture, mining, mechanic arts, and industrial pursuits in this state. To this end the management of said institution shall provide an annual state fair or exposition of all said enumerated products, which fair shall be conducted for a period of not more than two weeks as the management may designate between the fifteenth day of August and the fifteenth day of October of each year. [Amendment approved February 23, 1911; Laws 1911, p. 80.]

§ 1313. Board of Directors.

(Section 3.) The management and control of the administration of said fair shall be vested in a board of directors, consisting of five persons to be appointed by the Governor, from the state at large. The Governor shall make appointment of one of said directors for a term of six years, two for a term of five years, one for a term of four years, and one for a term of two years, and they shall each hold office during the term of their appointment and until their successor is duly appointed and qualified, providing, however, that any of the said directors may be removed by order of the state board of examiners for misfeasance, nonfeasance, or malfeasance in office after hearing first had before said board on any charges preferred in writing against any such director. [Amendment approved February 23, 1911; Laws 1911, p. 80.]

§ 1314. Expenditures and Receipts.

(Section 4.) The expenditure of all appropriations and revenues derived from the conduct of said fair shall be vested exclusively in the hands of the board of examiners and all money received from the conduct of said institution shall be received and collected as may be directed by the state board of examiners, and when received shall be at once deposited with the state treasurer to the credit of the "Montana State Fair Fund," and shall not thereafter be expended save and except on the approval of the state board of examiners. [Amendment approved February 23, 1911; Laws 1911, p. 81.]

§ 1315. Meeting of Directors—Other Officers and Employees.

(Section 5.) On the call of the Governor, the said board of directors shall within thirty days after their appointment meet at the capitol building in the city of Helena, for the purpose of considering the proper adminis-

tration of the business and affairs of said institution, and they shall at that time organize by electing a president and a secretary. They are also authorized to employ such other officers, laborers, or assistants as shall first have been approved by order of the state board of examiners. It may adopt such rules and regulations not inconsistent with law as in their judgment will best be calculated to contribute to the advancement of the purposes of said institution. After their organization, said board of directors are hereby required to meet at the capitol building in the city of Helena in the months of January and June of each year, and they shall be in constant attendance at the fair during the period of each annual exhibition. [Amendment approved February 23, 1911; Laws 1911, p. 81.]

§ 1316. Secretary of Board—Compensation of Officers.

(Section 6.) The secretary of the board of directors shall hold office for a period of four years and shall receive a salary of three thousand (\$3000) dollars per year for his work and services in connection with the business and affairs of said fair, and each of said directors shall receive all expenses by them incurred in traveling in the interest of the fair and a per diem of five (\$5) dollars per day when they are actually engaged in work pertaining to the business and affairs of the said fair. [Amendment approved February 23, 1911; Laws 1911, p. 81.]

§ 1317. Bonds of Officers.

Each member of the board of directors is hereby required to give bond to the state for the faithful performance of duties devolving upon him in the sum of two thousand (\$2,000) dollars, and the secretary shall be required to furnish a good and sufficient bond in the sum of ten thousand (\$10,000) dollars. Said bonds must be approved by the state board of examiners and shall be placed on file in the office of the Secretary of State. [Amendment approved February 23, 1911; Laws 1911, p. 81.]

§ 1318. Oath of Office.

(Section 7.) Each of said board of directors and also the secretary shall take and subscribe the oath of office prescribed by law for a state officer, and shall cause the same together with a certified copy of the order of appointment to be filed in the office of the Secretary of State. [Amendment approved February 23, 1911; Laws 1911, p. 82.]

§ 1319. Advisory Board.

(Section 8.) In addition to the board of directors, there shall be a state fair advisory board consisting of one representative from each county to be appointed by the board of county commissioners, the members of which shall each hold office for a period of four years and until their successors are appointed and qualified. Members of said advisory board shall qualify by subscribing the usual oath of office prescribed for state officers, and by filing same together with a certified copy of their appointment in the office of the Secretary of State. The duties of the advisory board shall be to aid in making the state fair a success and to see that each county in the state has proper exhibits to demonstrate such county's wealth and resources. Members of said board shall be paid such compensation as may be prescribed by the board of examiners, not exceeding five (\$5) dollars per day for the time actually spent in connection with the state fair work, and actual expenses. [Amendment approved February 23, 1911; Laws 1911, p. 82.]

§ 1320. Powers and Duties of Directors.

(Section 9.) The board of directors shall have full control and management of the fair as a state institution, and they shall have the care and custody of all property belonging to said institution and be intrusted with the direction of all matters of administration, of its business and affairs, and they shall in conformity with the provisions of this act prepare, adopt, publish and enforce all necessary rules for the conduct and management of the fair, its meetings, exhibits, and for the guidance of its officers and employees and they may remove from office any person by them appointed, for inefficiency, neglect or malfeasance in office. They shall arrange for the letting of stalls, stands, and all privileges, and prescribe the prices and premiums; provided, however, that as to entrance fees, money derived from the letting of privileges and as to prizes offered, the same must first be approved by the state board of examiners. The state fair shall be permanently located on the present grounds now owned by the state and heretofore devoted to state fair purposes, located north of the city of Helena, Lewis and Clark county, and said lands and such additional lands as may hereafter be obtained in connection therewith, are hereby dedicated for the use of the Montana State Fair. [Amendment approved February 23, 1911; Laws 1911, p. 82.]

§ 1321. Election and Reports of Secretary.

(Section 10.) The secretary of the state fair may be elected from the board of directors or the board may appoint any other person by them deemed competent to fill the office and perform all the duties incident thereto. The secretary shall make a written report to the state board of examiners concerning the administration of the business and affairs of said institution immediately following the close of each annual exhibition and at such other times as the state board of examiners may require. [Amendment approved February 23, 1911; Laws 1911, p. 83.]

§ 1322. State Examiner to Investigate Fair.

(Section 11.) The state examiner is required to annually investigate all of the financial business and affairs of said institution and to direct the methods of bookkeeping and accounting. [Amendment approved February 23, 1911; Laws 1911, p. 83.]

§ 1323. Repealing Clause.

(Section 12.) Chapter VIII, of Part III, Title V, of the Revised Codes of 1907 [§§ 1311 to 1323], and all acts and parts of acts in conflict herewith are hereby repealed. [Amendment approved February 23, 1911; Laws 1911, p. 83.]

§ 1323a. Directors of State Fair Authorized to Acquire Lands.

The board of directors of the Montana State Fair are empowered to acquire by donation, purchase or condemnation, one hundred and thirty-five (135) acres, more or less, of land adjoining the present state fair grounds on the south and situated in sections 13 and 24 in township 10 north of range 4 west, in the county of Lewis and Clark. The said land shall be conveyed to and vested in the state of Montana and shall be forever set apart for the use and benefit of the Montana State Fair. In order to acquire said land the board may exercise the right of eminent domain under the provisions of the Code of Civil Procedure.

Upon deposit in his office of a deed or deeds, or certified copy of judgment or judgments, conveying said property to the state of Montana, accompanied by abstract of title to said land, approved by the Attorney General, the state auditor is hereby authorized to draw warrants to the person or persons conveying said land in the amounts certified to be correct by the president of said board, or the chairman of the executive committee. [Approved March 3, 1911; Laws 1911, c. 77, p. 144.]

HIGHWAY LAW.

CHAPTER I.*

CLASSIFICATION AND DEFINITIONS.

§ 1337. Name or Title of Act.

(Section 1.) This act shall be known as "The General Highway Law." [Amendment approved March 10, 1915; Laws 1915, p. 319.]

§ 1338. Highway Deemed to Include What.

(Section 2.) Within the meaning of this act a highway shall be deemed to include its necessary embankments, retaining walls, culverts, sluices and drains, and a bridge shall be deemed to include its approaches, abutments and piers. [Amendment approved March 10, 1915; Laws 1915, p. 319.]

§ 1339. Public Highways Defined.

(Section 3.) All highways, roads, lanes, streets, alleys, courts, places and bridges laid out or erected by the public or now traveled or used by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such by the petition of real property, are public highways. [Amendment approved March 10, 1915; Laws 1915, p. 319.]

*Sections 1337 to 1421 herein embrace chapter 141 of the Laws of 1915. That chapter takes the place of chapter 72 of the Laws of 1913, and covers the subject of highways and roads embraced in sections 1337 to 1456 of the Revised Codes of 1907. Hence the editor here uses those section numbers, so far as necessary, in designating the sections of the present law.

The repealing clause of this chapter 141 of the Laws of 1915 expressly repeals sections 1337, 1338, 1340, 1341, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1371, 1372, 1390, 1392, 1393, 1394, 1395, 1396, 1405, 1410, 1427, 1430, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1454 and 1456 of the Revised Codes.

From an examination of this list of repealed sections it will be noticed that not all of the sections running from 1337 to 1456 of the Revised Codes of 1907 are expressly repealed. As a matter of fact, however, all those which are not expressly repealed are amended or re-enacted, with the possible exception of sections 1369,

1416, 1435, 1453 and 1455, and it is not improbable that the intention has been to repeal these also, for the evident purpose of the legislature, as expressed in chapter 141 of the laws of 1915, has been to cover the entire subject formerly included within sections 1337 and 1456 of the Revised Codes of 1907.

In construing chapter 72 of Laws of 1913, the supreme court has rendered the following decisions:

The legislative intention was not that all public highways, including roads, streets, alleys, courts, culverts and bridges composing the same should be appraised as county property, and the value, thus set upon them, considered in adjusting the county indebtedness. *State ex rel. Foster v. Ritch*, 49 Mont. 157, 140 Pac. 731.

If a complaint contains an averment to the effect that the pleader entered upon an existing public highway and for undisclosed reasons affixed thereto a structure which became a part of it, the inference is possible that he acted as a mere volunteer, intending such structure to be part of the highway and so belong to the public. *State v. Board of Commrs.*, 49 Mont. 523, 143 Pac. 984.

§ 1340. Classification—Common and Main Highways.

(Section 4.) Public highways in this state shall hereafter be classed as common highways, main highways, and state highways. All highways which are not established or improved in the manner hereinafter provided for main highways, or state highways, shall be common highways. Main highways shall be such as are established or improved in the manner provided by chapter IV of this act. [Amendment approved March 10, 1915; Laws 1915, p. 319.]

§ 1341. Abandonment or Vacation of Highways.

(Section 5.) All public highways once established must continue to be public highways until abandoned by operation of law, or by judgment of a court of competent jurisdiction, or by order of the board of county commissioners of the county in which they are situated; but no order to abandon any main highway shall be valid unless preceded by due notice and hearing as provided in this act; and no state highway can be abandoned except on the joint order of the board of county commissioners and the state highway commission. [Amendment approved March 10, 1915; Laws 1915, p. 319.]

This section and section 1340 provide a general rule by which highways of every character, including streets as well as county roads, may be established or vacated, but this does not mean that the streets of cities and towns shall be exclusively under the control of the boards of county commissioners; sections 3212, 3213, 3259, 3466, 3479, and 3480, post, relating to the power of the authorities of incorporated cities and towns to establish, open, widen, and vacate streets, are still in force. *Barnard Realty Co. v. City of Butte*, 48 Mont. 102, 113, 136 Pac. 1064.

The mere use of land by the public as a street for the statutory period, not coupled with an assumption of jurisdiction over it by the city authorities, is insufficient to clothe the city with title by prescription. *Barnard Realty Co. v. City of Butte*, 48 Mont. 102, 114, 136 Pac. 1064.

A highway, whether a county road or a street, once established, cannot be vacated, except by an order of the public authorities having jurisdiction over it. *Barnard Realty Co. v. City of Butte*, 48 Mont. 102, 114, 136 Pac. 1064.

Travel by one or more persons over a given route, outside of an incorporated city or town, is not in itself, in the absence of an assumption of jurisdiction by the board of county commissioners, by

some definite action, sufficient to constitute adverse use of it as a highway. *Barnard Realty Co. v. City of Butte*, 48 Mont. 102, 113, 136 Pac. 1064.

Where a person's land has been taken with his consent, and converted into a highway, established according to law, he cannot afterward destroy the highway, through the medium of an action in ejectment, though the county commissioners did not observe the conditions upon which consent was given; they could have taken the land without the owner's consent. *Flynn v. Beaverhead Co.*, 49 Mont. 347, 353, 141 Pac. 673.

Where an owner consents to the opening of a road through his land, and the proceedings as to the opening are in strict conformity with the statute, the road becomes an established highway, though the county commissioners did not observe the conditions upon which consent was given, and must remain one until it has ceased to be such by one of the means prescribed by law; but the owner cannot be thus deprived of his land without full compensation of it; and, if he is not paid, he is entitled to maintain an action therefor. *Flynn v. Beaverhead County*, 49 Mont. 347, 352, 141 Pac. 673.

Negligence in maintaining guy wire on untraveled portion of highway. See note post, § 4400.

§ 1342. Width of Way or Road.

(Section 6.) The width of all public highways, except bridges, alleys, lanes, must be sixty (60) feet unless a greater or less width is ordered by the board of county commissioners on petition of the person interested. The width of all private highways and by-roads, except bridges, must be at least twenty (20) feet. Nothing in this act must be construed as to increase or diminish the width of either kind of a highway already established or used as such. [Amendment approved March 10, 1915; Laws 1915, p. 320.]

"When a highway has been graded or otherwise prepared for travel, its use is confined to the prepared or used portion; and it is a question for the jury to say whether a telephone company, in constructing its line along a highway, was guilty of negligence in anchoring a guy wire to the ground at a point from one to three feet outside of the graded or traveled portion of the road. *Howard v. Flathead etc. Tel. Co.*, 49 Mont. 197, 202, 141 Pac. 153.

In this state, the lawful width of public highways, generally, is sixty feet. *City of Butte v. Miskosowitz*, 39 Mont. 350, 357, 102 Pac. 593.

Theoretically, a public highway is sixty feet wide, but the county is not required to grade or keep it, for its entire width, in condition for public travel; the county's duty is fully discharged, in this respect, if the portion graded, or made ready for travel, is of sufficient width to accommodate the use which may fairly be anticipated to be made of it; and the authorities in control may use the remaining portions for purposes inconsistent with their use as drive-ways; as, for instance, for piling stones, cutting down and leaving steep embankments, or for drainage ditches. *Howard v. Flathead Independent Tel. Co.*, 49 Mont. 197, 201, 141 Pac. 153.

§ 1343. Public Acquires Only Right of Way.

(Section 7.) By taking or accepting land for a highway the public acquired only the right of way and the incidents necessary to enjoying and maintaining the same, subject to the regulations in this act and the Civil Code provided. [Amendment approved March 10, 1915; Laws 1915, p. 320.]

CHAPTER II.

TAXATION AND REVENUE.

§ 1344. Road Tax Levy.

(Section 1.) For the purpose of raising revenue for the construction, maintenance and improvement of public highways, the board of county commissioners of each county in this state shall annually levy and cause to be collected a general tax upon the taxable property in the county of not less than two mills, and not more than five mills on the dollar, which shall be payable to the county treasurer with other general taxes. There is also established a general road tax of two dollars (\$2) per annum on each male person over the age of twenty-one (21) years, and under the age of sixty (60) years, inhabitant within the county, and payable by each person liable therefor at any time within the year. The collection of these taxes shall be under the direction of the board of county commissioners; taxes from freeholders to be collected the same as other taxes, and from nonfreeholders as commissioners may direct. Provided, that the foregoing provisions of this section shall not apply to the incorporated cities and towns, which, by ordinance, provide for the levy and collection of a like general tax and a like special tax within such cities and towns for road, street, and alley purposes. All moneys collected under the provisions of this act shall belong to the general road fund of the county. [Amendment approved March 10, 1915; Laws 1915, p. 320.]

§ 1345. Issuance of Highway Bonds—Limit of Indebtedness.

(Section 2.) Wherever in the judgment of the board of county commissioners of any county, it becomes necessary or advisable for the construction or improvement of any main highway or state highway therein, to raise revenue in addition to that furnished by the taxes and licenses authorized by this act, it shall be lawful for such board to issue, on the credit of the county, coupon bonds to such amounts as said board may find necessary, provided that such bonds shall not, together with all other outstanding indebtedness of the county, exceed five per centum of the value

of the taxable property within such county, to be ascertained by the last preceding general assessment therein and provided further that such proceedings be had prior to and in the issuance of such bonds, as is required in the case of other county bonds by Articles III and V of Chapter II, Title II, Part IV of the Political Code. [Amendment approved March 10, 1915; Laws 1915, p. 320.]

§ 1346. Employers to Furnish Lists of Employees Liable to Tax.

(Section 3.) Every employer having in his or its employment any person or persons liable for the special road tax of two dollars (\$2) mentioned in this act, must, on or before the third Monday of March in each year, and monthly thereafter until the first day of October, furnish to the county treasurer a complete list of all the persons so employed and if any such employer shall neglect or refuse to furnish such list, he shall forfeit to the county, in which said road tax is collectible, the sum of fifty dollars (\$50) to be recovered by an action brought in the name of the state in any justice court of said county, and the further sum of fifty dollars (\$50) for each refusal or neglect to furnish such list after any demand shall have been made by the county treasurer therefor. Upon the receipt of said lists it shall be the duty of said county treasurer to furnish to said employer, furnishing such lists, printed special road tax receipt books with proper stubs containing memorandum of name, amount and date attached. [Amendment approved March 10, 1915; Laws 1915, p. 321.]

§ 1347. Notice from County Treasurer to Employer of Liability for Tax.

(Section 4.) If any person required to pay the special road tax mentioned in this act, does not pay the same and has no property subject to taxation, and the person owing the same is in the employment of any other person, the county treasurer must deliver to the employer a written notice, stating the amount of tax due for such employee and from the time of receiving said notice the employer is liable to pay said tax and the tax so paid may be deducted by such employer from the amount then due or to become due to such employee. [Amendment approved March 10, 1915; Laws 1915, p. 321.]

CHAPTER III.

ROAD DISTRICTS AND DUTIES OF OFFICERS.

§ 1348. Minutes of County Clerk to Include Proceedings Relative to Highways.

(Section 1.) The county clerk must include in the minutes of the board of county commissioners all proceedings and orders of the board relative to each highway within the county. [Amendment approved March 10, 1915; Laws 1915, p. 321.]

§ 1349. Powers and Duties of County Commissioners Respecting Highways.

(Section 2.) The board of county commissioners of the several counties of the state have general supervision over the highways within their respective counties.

1. They must in their discretion, keep the county divided into suitable road districts; place each of such road districts in charge of a competent

road supervisor and order and direct each of such supervisors concerning the work to be done upon the public highway in his district.

2. They must provide and order the county surveyor, or if the county surveyor is incompetent, some other competent surveyor designated by the board, to prepare suitable plat-books and have recorded therein a full description of every public highway within the county, showing each course by bearing and distance, with a full and complete map thereof, together with a record of all other proceedings with reference to the same.

3. They must cause to be surveyed, viewed, laid out, recorded, opened, worked and maintained, such highways as are necessary for the public convenience, as in this act provided, and cause to be erected and maintained thereon guide posts, as provided in this act.

4. They must abolish or abandon in the manner provided in this act such public highways as are not necessary for the public convenience.

5. They must contract, agree for, purchase or otherwise lawfully acquire, the right of way over private property for the use of public highways, and for that purpose institute, when necessary, proceedings under Title VII, Part III, of the Code of Civil Procedure, paying for such right of way from the general road fund of the county.

6. They may, in their discretion, but subject to the limitations and provisions in the constitution and Revised Codes provided, issue bonds upon the faith and credit of the county for the construction or improvement of main highways, state highways and bridges.

7. They may, in their discretion, but subject to the limitations and restrictions provided in the Revised Code for the letting of public contracts, let out by contract the construction, maintenance and improvement of the public highways, and the construction, maintenance or repairs of bridges, when the amount of work to be done exceeds the sum of one thousand dollars (\$1,000).

8. They may, in their discretion, cause to be done whatever may be necessary for the best interests of the roads and road districts of their several counties.

9. They must make such reports, relating to the county roads under their supervision, to the state highway commission as may be requested by said commission.

10. They may, in their discretion, employ a competent road builder who shall be paid for his services not to exceed seven dollars per day; who shall serve during the pleasure of the board; whose duty it shall be, under the direction and control of said board, to prescribe the time and place, when and where, all work shall be done on the roads of the county; report any delinquency or any inefficiency of any road overseer or any other person employed upon such roads to the board of county commissioners and perform such other duties as may be prescribed by the said board. [Amendment approved March 10, 1915; Laws 1915, p. 322.]

A board of county commissioners must have official notice, as a board, before its members can be made individually answerable for personal injuries arising from defective highways. *Smith v. Zimmer*, 45 Mont. 282, 306, 125 Pac. 420.

The individual liability of county commissioners for injuries arising from defective highways is not absolute, but depends upon whether they have been guilty of negli-

gence. *Smith v. Zimmer*, 45 Mont. 282, 303, 125 Pac. 420.

Before the individual members of a board of county commissioners can be held personally answerable for negligent conduct in refusing to repair a public highway, the board of which they are members must have actual notice of such defective condition; but if, after such actual notice to the board, any two or more members thereof

negligently or willfully refuse to cause the defect to be repaired, either directly or through the agency of the road supervisors, the members, so guilty of negligent conduct, are answerable to one who, without contributory negligence on his part, is injured thereby. *Smith v. Zimmer*, 45 Mont. 282, 306, 125 Pac. 420.

Though a road overseer, or a board of commissioners do not have sufficient money, at their disposal, to repair a dangerous place in a highway, this does not excuse the omission to take suitable measures to give notice of the obstruction, or to provide suitable barriers to prevent a traveler from being injured by it. *Smith v. Zimmer*, 45 Mont. 282, 293, 125 Pac. 420.

§ 1350. Purchase of Machinery and Materials.

(Section 3.) The board of county commissioners may also, in their discretion, out of the general road fund of the county, purchase and operate grading and rock-crushing machinery that they may deem necessary or desirable for the improvement of the public highways in the county, and may also acquire, out of the same fund, by purchase, condemnation, lease or gift, deposits or quarries of suitable road-building material; and any crushed rock or gravel, not directly used or needed by such county in the construction, repair or maintenance of its roads, may be sold at not less than actual cost of production to any person, firm or corporation, desiring to use the same upon any public street or highway within the county and the proceeds of any such sale shall be paid into the general road fund. [Amendment approved March 10, 1915; Laws 1915, p. 323.]

§ 1351. Road Supervisor—Appointment and Compensation.

(Section 4.) Road supervisors, when appointed, shall serve during the pleasure of the board of county commissioners and shall in all things be under the direction and control of said board. Every road supervisor must, before entering upon the duties of his office, be a resident elector of the road district for which he is appointed and must file with the county clerk the customary oath of office, together with a bond approved by said board for the faithful performance of his duties. As compensation for his services he shall receive not less than two dollars (\$2) nor more than four dollars (\$4) per day for eight hours' labor, but the time taken in going to or from his home to the place of labor shall not be included within such period of eight hours. [Amendment approved March 10, 1915; Laws 1915, p. 323.]

§ 1352. Duties of Road Supervisors—Reports, Accounts and Statements.

(Section 5.) Road supervisors when appointed and under the direction and the supervision of the board of county commissioners must:

1. Take charge of all highways, bridges and causeways within their respective districts; open all new roads when the same are duly established and ordered to be opened by the board of county commissioners; perform at the time and in the manner directed by the board of county commissioners whatever shall be lawfully directed by the board concerning the public highways within their respective districts.

2. Make and file with the county clerk verified reports quarterly, or oftener if required by the county commissioners, showing the number of days they have been employed during the previous three months and when and how employed; the number of days' labor performed upon the public highways in their respective districts, when and by whom performed, the character and kind of work done and the wages agreed to be paid per day; the number of teams and implements and the amount, value and kind of material used, by whom and where used and the price agreed to be paid therefor; the number and character of all the tools and implements belonging to the county within their respective districts.

3. Keep a correct account of all labor performed and animals, implements or material furnished by himself or others upon the public highways and give to persons performing such work or furnishing such animals, implements or materials, a certificate stating the number of days' work performed, the character and kinds of such work and the price agreed to be paid therefor; and the number of days any animals or implements have been used and the price to be paid therefor and the amount and character of all materials furnished. [Amendment approved March 10, 1915; Laws 1915, p. 323.]

§ 1353. Employment of Laborers, Teams, etc.

(Section 6.) Whenever it becomes necessary for any road supervisor, in the construction or repairing of any public highway in his district, to secure the assistance of other persons, he shall be empowered to employ suitable laborers, teams and implements, and to contract as to the price to be paid therefor, which must not exceed the rate of four dollars (\$4) per day of eight hours for each person and six dollars (\$6) per day of eight hours for man and team; but the time taken by such person or teams in going to and from the place of labor shall not be included within such period of eight hours. [Amendment approved March 10, 1915; Laws 1915, p. 324.]

§ 1354. Removal of Obstructions and Repairing of Bridges.

(Section 7.) Whenever any public highway becomes obstructed from any cause, or any bridge need repairing or becomes dangerous for the passage of teams or travelers, the board of county commissioners, or the supervisor of the road district, if there be one, upon being notified thereof, must forthwith cause such obstruction to be removed, or bridge repaired, for which purpose such person as the board of county commissioners may designate or the road supervisor of the district may order out such number of inhabitants of the district as may be necessary to aid in removing such obstruction or repairing such bridge; or if any person after three days' notice, whether said notice be oral or written, who being physically able to respond, shall fail to be present at the time and place designated, or who, having attended, refuses to obey the direction of the person in charge of the work, or passes his time in idleness, or inattention to the duty assigned him, shall be liable to punishment as for a misdemeanor. Provided, that every person responding to any such order and performing the duties assigned him, shall be compensated for his labor at the rate not to exceed four dollars (\$4) per day for eight hours, the time taken in going to and from the place of labor, not included. [Amendment approved March 10, 1915; Laws 1915, p. 324.]

Editorial Notes.

Right to compel labor on highways. 74 Am. St. Rep. 667.

§ 1355. Limit on Amount Expended on Road District.

(Section 8.) The amount of expenditures in any road district for labor and teams together with the compensation to be paid to the supervisor, shall not exceed in the aggregate the sum apportioned quarterly by the board of county commissioners to such road district, but if such sum is not sufficient, said board may appropriate from the general road fund any amount which may be necessary in their judgment for the use and benefit

of such district. Provided that not less than fifty per cent of the taxes collected from each road district shall be expended annually by the county commissioners on the roads within the boundaries of said district. [Amendment approved March 10, 1915; Laws 1915, p. 325.]

§ 1356. Examination of Supervisor's Report and Issuance of Warrant for Claims.

(Section 9.) The board of county commissioners at the first monthly or quarterly meeting held after the filing of any supervisor's report, must examine the same and if found correct and the work reported to have been done was necessary and properly done, cause an order to be drawn on the county treasurer against the road fund for the amount due any road supervisor for his services; and upon the presentation of any certificate issued by road supervisors for labor performed by others and the verification by the owners thereof, as in other cases of claims against the county, the board shall cause to be issued to the owner or holder of such claims, a warrant for the amount thereof, drawn on the county treasurer against the road fund. [Amendment approved March 10, 1915; Laws 1915, p. 325.]

§ 1357. Construction of Drains and Ditches—Penalty for Obstructions.

(Section 10.) The road supervisor, or other person designated by the board of county commissioners, has authority to open or construct drains and ditches for the making and preserving of roads and highways, doing as little injury as may be to the adjoining land, and any person stopping or obstructing the drains or ditches so made, forfeits the sum of fifty dollars (\$50) to be recovered by the supervisor or board of county commissioners in a civil action in any court of competent jurisdiction. If any person feels aggrieved by the act of any supervisor, or other person designated by the board of county commissioners, he may make complaint in writing to the board of county commissioners who will allow just damages and pay the same out of the road fund. [Amendment approved March 10, 1915; Laws 1915, p. 325.]

§ 1358. Tools and Implements for Use of Road Supervisor.

(Section 11.) Upon the requisition of any road supervisor, the board of county commissioners shall, whenever necessary, furnish to such supervisor any plows, scrapers, or other tools and implements necessary for the use of his road district and cause the same to be paid for out of the general road fund of the county. The supervisor must preserve such tools and implements, and must not allow the same to be used except on public highways; at the expiration of his term of office, or upon his removal therefrom, he must turn over all such tools and implements to his successor or to the board of county commissioners. [Amendment approved March 10, 1915; Laws 1915, p. 326.]

§ 1359. Inspection of Construction Work.

(Section 12.) The board of county commissioners shall, by order, direct the county surveyor, or both the county surveyor and some member or members of said board, or if the county surveyor is incompetent, appoint a competent engineer in his place, to inspect the condition of any contract construction work on any highway or bridge in the county, before payment therefor. [Amendment approved March 10, 1915; Laws 1915, p. 326.]

§ 1360. Compensation for Making Inspection.

(Section 13.) Such member or members of said board shall receive, for making said inspection, the sum of eight dollars (\$8) per day, and actual traveling expenses, and the county surveyor shall receive for making said inspection and for all other work performed for the county under the direction of the board of county commissioners, the sum of seven dollars (\$7) per day and actual traveling expenses, which shall be audited and allowed in the same manner as any other claims against the county. [Amendment approved March 10, 1915; Laws 1915, p. 326.]

§ 1361. Minute Entry of Inspection.

(Section 14.) The county surveyor, or such member or members of said board, when they act jointly, must, at the next regular meeting of the board, make a minute entry of each inspection. [Amendment approved March 10, 1915; Laws 1915, p. 326.]

CHAPTER IV.

COMMON HIGHWAYS.

§ 1362. Petition by Freeholders to Establish, Change or Discontinue Highway.

(Section 1.) Any ten or a majority of the freeholders of a road district, taxable therein for road purposes, may petition in writing the board of county commissioners to establish, change or discontinue any common highway therein. When such a highway is petitioned for, upon the dividing line between two (2) counties, the same course must be pursued as in other cases, except that a copy of the petition must be presented to the board of county commissioners of each county, who may appoint viewers to act jointly and the viewers so appointed must report their findings to both boards. [Amendment approved March 10, 1915; Laws 1915, p. 326.]

The people of a county can establish and construct as many highways, bridges and ferries as they deem necessary, and by whatsoever method of procedure they may elect; and, incident to the authority given to a board of county commissioners to issue bonds, is the necessary power to proceed with the entire project for which the bonds are to issue. *Reid v. Lincoln County*, 46 Mont. 31, 64, 125 Pac. 429.

A county may establish a highway by any method of procedure it may elect, and its

issue of bonds for that purpose, authorized at a valid election, will not be held invalid because the requisite number of freeholders may not petition therefor; or because the county may not be able to acquire the rights of way; or because Congress had not given permission, before the bond election, to erect a bridge across a navigable stream, where such permission has been given since the election. *Reid v. Lincoln County*, 46 Mont. 31, 65, 125 Pac. 429.

§ 1363. Contents of Petition.

(Section 2.) The petition must be set forth and describe particularly the highways to be abandoned, discontinued, altered or constructed, and if the same is to be altered, laid out or constructed, the general route thereof, over what lands, who are owners thereof, whether such of them as can be found consent thereto, and if not the probable cost of the right of way, where consent is not had, the necessity for and advantage of the proposed road. [Amendment approved March 10, 1915; Laws 1915, p. 327.]

§ 1364. Viewing of Proposed Road—Viewers and Their Compensation.

(Section 3.) When any such petition is filed, the board of county commissioners at its next regular meeting, shall fix a time not exceeding sixty

(60) days from date of such meeting, for viewing of such proposed road, and shall appoint and cause to be notified three disinterested freeholders of the county, one of whom may be the county surveyor, or some other competent surveyor designated by the board, who shall act as viewers. The persons so appointed must, at time designated by the board, proceed to the discharge of their duties, taking an oath or affirmation before entering upon the same that they will faithfully and impartially discharge such duties according to law; such oath or affirmation may be administered by any proper officer, or by any one of the viewers who has been previously sworn by a proper officer. The viewers, except the county surveyors or surveyor designated in his stead, shall receive as compensation not to exceed five dollars (\$5) each day for their services, out of the road fund of the county; the surveyor serving instead of the county surveyor shall receive the same compensation as may be provided for the county surveyor for like services. [Amendment approved March 10, 1915; Laws 1915, p. 327.]

§ 1365. Refusal to Act as Viewer a Misdemeanor.

(Section 4.) Any person who shall be appointed by the county commissioners as a viewer, reviewer or surveyor of any road, who shall refuse or neglect to act as such without making to said board satisfactory excuse for such refusal or neglect, shall be guilty of a misdemeanor and be subject to a fine of not exceeding fifty dollars (\$50). [Amendment approved March 10, 1915; Laws 1915, p. 327.]

§ 1366. Duty of Viewer—Report.

(Section 5.) It shall be the duty of the viewers to view and lay out the proposed road or change over the route and in the manner proposed; but they may also, in their discretion, or by order of the county commissioners, investigate and consider feasibility and cost of any other route than the one petitioned for which would serve the same purpose. They must notify all resident owners or agent of land over which the proposed road or change passes; ascertain whether the resident owners consent thereto, and the amount, if any, they claim or demand for the right of way over which it passes, together with the cost of additional fencing and of any bridging or grading necessary; the necessity for, or the public convenience to be subserved by the proposed road or change and whether, in their opinion, such proposed road should be opened or such change be made. When their view is completed, the viewers must report to the board of county commissioners:

1. The course, termini, length and probable cost of construction of the proposed highway or change.

2. The estimate of damages to the owners of any lands over which it is proposed to run the highway, or that may be affected by the proposed change, including the cost of any additional fencing required.

3. The names of land owners who consent to give the right of way, with their written consent thereto.

4. The names of those who do not consent, the amount of damages claimed by each, and when there are nonresident land owners and no agent upon the land upon whom notice can be served, such nonresident land owners must be considered as nonconsenting, unless their written consent is obtained.

5. The feasibility, desirability, and cost of any other route or change serving the same purpose, with the necessity for a greater, or the practica-

bility of a less width than petitioned for. [Amendment approved March 10, 1915; Laws 1915, p. 327.]

§ 1367. Hearing of Report of Viewers.

(Section 6.) The board of county commissioners at the next meeting after the filing of the report, or at the time when the report is filed, if then in session, must fix the day for hearing the same, must notify the owners of lands not consenting to give the right of way of the hearing, by having written notice served on them by registered mail, postage prepaid, to their postoffice address or to that of the occupant or agent of the owner; or if neither the owner, agent of the owner, or occupant, can be notified by reason of nonresidence or other cause, then by posting notices, one on a conspicuous place on the land, or left at the owner's, agent's or occupant's residence, and one at the courthouse, ten (10) days prior to the day fixed for the hearing, and must on that day fixed for the hearing or to which it may be postponed or adjourned, hear the evidence and proof from all parties interested for and against the proposed alteration of the new road, ascertain and by order declare the amount of damage awarded to each nonconsenting land owner and declare the report of the viewers to be approved or rejected. [Amendment approved March 10, 1915; Laws 1915, p. 328.]

§ 1368. Ordering Highway to be Opened—Order Concerning Payment of Damages.

(Section 7.) If the board approve the report and there are no non-consenting land owners, the highway may by order be declared a public highway and the road supervisor or other person designated by the board of county commissioners ordered to open the same to the public, and the board shall order the county surveyor, or if the county surveyor is incompetent, some other competent surveyor designated by the board, to survey the same and plat it and file his field-notes with the county clerk and recorder, for which the surveyor shall receive seven dollars (\$7) per day and actual traveling expenses.

The board of county commissioners upon making each and every order establishing the location or alteration of any highway, must order the amount of damages sustained by each and every person owning or claiming lands or any improvements thereon and affected thereby, as finally fixed and assigned by them, to be set apart in the treasury out of the proper funds, to be paid to the proper owner or claimant, if known, and to be kept for the owner or claimant if unknown, and to be paid to him or her upon showing or establishing their right or title to such lands or improvements. Any moneys set apart, as herein provided for, must be returned to the fund from which it was set apart, if not paid to or accepted by the proper owner or claimant. If the awards are all accepted the road must be declared a public highway and be opened as before provided. [Amendment approved March 10, 1915; Laws 1915, p. 329.]

§ 1368a. Determination of Damages.

(Section 8.) The damage must be determined by ascertaining the benefits and damages accruing to any person by reason of altering, changing, or laying out such roads, and the sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any,

shall be the amount of damages awarded. [Amendment approved March 10, 1915; Laws 1915, p. 329.]

§ 1369. Condemnation Proceedings on Rejection of Damages.

(Section 9.) If any award of damages is not accepted within thirty days from the date of the award it shall be deemed rejected by the land owners. The board must, by order, direct proceedings to procure the right of way to be instituted by the county attorney of the county under and as provided by Title VII, Part III of the Code of Civil Procedure against all nonaccepting land owners, and when thereunder the right of way is procured, the roads must be declared a public highway and opened as hereinbefore provided. [Amendment approved March 10, 1915; Laws 1915, p. 329.]

A person's land may be taken for a highway, upon payment of full compensation therefor. *Flynn v. -Beaverhead County*, 49 Mont. 347, 353, 141 Pac. 673.

§ 1370. Fund from Which Expenditures to be Paid.

(Section 10.) All awards by agreement, ascertainment by the board of county commissioners, or by the proper court, and all expenses of viewing, surveying, laying out, or altering any road must be paid out of the general road fund on the order of the board of commissioners. [Amendment approved March 10, 1915; Laws 1915, p. 329.]

§ 1371. Record of Opening or Alteration of Road.

(Section 11.) If a highway is opened or altered, the final report of the viewers, including the plat, field-notes, and report of the surveyor, must be recorded in the office of the county clerk in books kept for that purpose. [Amendment approved March 10, 1915; Laws 1915, p. 330.]

The record of a county road, kept by the county commissioners, under former sections 1341 and 1357, is a recognition of the road, by the board, as a public road; and this, together with other facts showing its use by the public, is a sufficient *prima facie* showing that it is a public road. *Smith v. Zimmer*, 45 Mont. 282, 293, 125 Pac. 420.

§ 1372. Notice of Opening or Altering Highway.

(Section 12.) If a highway is ordered to be altered, or opened, the board of county commissioners must cause notices thereof to be posted at three public places along the line of said highway, stating that said highway will be opened and worked after sixty days from the date of posting said notice. [Amendment approved March 10, 1915; Laws 1915, p. 330.]

§ 1373. Opening Highway Through or Along Growing Crops.

(Section 13.) No highway must be ordered opened through field or growing crops or along the line where crops would thereby be exposed to stock until the owner thereof has sufficient time to harvest and care for such crops. [Amendment approved March 10, 1915; Laws 1915, p. 330.]

§ 1374. Notice to District Supervisor of Opening Highway—Award of Contract—Bond of Contractor.

(Section 14.) When a highway is to be opened, constructed, altered, or widened, the county clerk must notify the supervisor of the proper district and furnish him with a certified copy of the order of the county commissioners; provided, that when the estimated cost of opening, constructing, altering, or widening exceeds two hundred dollars the work may, in the discretion of the county commissioners, be let by contract; and if such

estimated cost exceeds the sum of five hundred dollars, such work may be let by contract, unless the board shall find that such work may be otherwise done at less cost; but before any contract shall be let, as provided herein, the board of county commissioners shall advertise for bids therefor at least once a week for two successive weeks in a newspaper of general circulation in the county, and the contract shall then be awarded to the lowest responsible bidder who shall, before entering upon the performance of the work, execute and deliver to the board of county commissioners an undertaking with two or more sureties, to be approved by the board of county commissioners, in a sum not less than equal the amount for which the contract is awarded and conditioned for the prompt, faithful, and efficient performance of such work; provided, however, the board of county commissioners may reserve the right to reject any and all bids. [Amendment approved March 10, 1915; Laws 1915, p. 330.]

§ 1375. Recordation of Deeds and Judgments for Right of Way.

(Section 15.) In all cases where consent to use the right of way for a highway is voluntarily given, purchased, or condemned and paid for, either an instrument in writing, conveying the right of way and incidents thereto, signed and acknowledged by the party making it, or a certified copy of the judgment of the court condemning the same, must be made and filed and recorded in the office of the county clerk, in which the land so conveyed or condemned must be particularly described. [Amendment approved March 10, 1915; Laws 1915, p. 330.]

§ 1376. Crossings of Railroad, Canals and Ditches.

(Section 16.) Whenever highways are laid out across railroads, canals, or ditches, or public lands, the owners or corporations using the same must, at their own expense, so prepare their roads, canals, or ditches, that the public highway may cross the same without damage or delay; and when the right of way for a public highway is obtained through the judgment of any court over any railroad, canal, or ditch, no damage must be awarded for the simple right to cross the same. [Amendment approved March 10, 1915; Laws 1915, p. 331.]

§ 1377. Removal of Fences—Notice.

(Section 17.) When the alteration of an old or the opening up of a new road makes it necessary to remove the fences on land given, purchased, or condemned by order of the court for road or highway purposes, notice to remove the fence must be given by the road supervisor or other person designated by the board of county commissioners to the owner, the occupant or agent, by registered mail, postage prepaid, to his or her address; and if the same is not done within ten days thereafter, or commenced and prosecuted with due diligence, the road supervisor or other person designated by the board of county commissioners must cause it to be removed at the expense of the owner and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment. [Amendment approved March 10, 1915; Laws 1915, p. 331.]

§ 1378. Highway to Follow Subdivision or Section Lines.

(Section 18.) Highways must be laid out and opened when practicable upon subdivision or section lines; provided, however, that this section shall not be construed to prevent roads being laid out on diagonal lines when

public purposes shall be best subserved thereby. [Amendment approved March 10, 1915; Laws 1915, p. 331.]

§ 1379. Change of Highway upon Petition of Freeholders.

(Section 19.) Upon a petition signed by a majority of the freeholders, or owners, residing upon any common highway, or portion thereof, petitioning that such highway, or a portion thereof, be so changed as to run on subdivision or section lines, the board of county commissioners must proceed to investigate the same, to all intents and purposes as though it were a petition to establish, change, or discontinue any common highway, as such proceedings are provided for in this chapter, and after such investigation or hearing may make such change, provided it can be done without material damage, injury, or serious inconvenience to the public customarily using such highway, or portion thereof; provided further, that those petitioning for such change shall bear all or such portion of the cost and expense thereof as the county commissioners may order. [Amendment approved March 10, 1915; Laws 1915, p. 331.]

§ 1380. Defects in Proceedings Immaterial.

(Section 20.) None of the proceedings authorized by this chapter shall be invalid by reason of any defect, informality, or irregularity therein which does not materially affect the interests of the county or prejudice the substantial rights of property owners immediately concerned. [Amendment approved March 10, 1915; Laws 1915, p. 331.]

CHAPTER V.

BRIDGES.

§ 1381. County to Maintain Public Bridges.

(Section 1.) All public bridges are maintained by the county at large under the management and control of the board of county commissioners, the expense of construction, maintaining and repairing the same provided in this act. [Amendment approved March 10, 1915; Laws 1915, p. 332.]

The word "bridge" includes the approaches thereto; hence, where the constitutional limitation of a county debt for a single purpose is ten thousand dollars, a contract whereby the county obligates itself to pay within a few dollars of that sum for the bridge alone, when an additional expenditure will be required to complete the bridge and its approaches, running the total expenditure beyond the constitutional limitation, is void. *Jenkins v. Newman*, 39 Mont. 77, 81, 101 Pac. 77.

A bridge is not such "county property" as that its value shall enter into consideration in the adjustment of indebtedness and property rights and liabilities, when a new county is created out of an old one; it is to be treated as but a portion of the public highway. *State v. Ritch*, 49 Mont. 155, 157, 140 Pac. 731.

Editorial Notes.

Approval as part of bridge. *Ann. Cas.* 1912B, 792.

§ 1382. Bridge Tax—Levy and Collection.

(Section 2.) The board of county commissioners may levy a special tax not to exceed two mills on the dollar of the taxable property of the county for the purpose of constructing, maintaining, and repairing free public bridges. Such tax must be levied and collected in the same manner as other taxes, and the money when collected and paid into the county treasury must be kept as a special bridge fund, subject to the order of the board of county commissioners, to be used in the construction, maintaining, and repairing of bridges at such places as said board directs. [Amendment approved March 10, 1915; Laws 1915, p. 332.]

§ 1383. Construction or Repair of Bridges Costing More than Two Hundred Dollars.

(Section 3.) No bridge, the cost of construction or repairs of which exceeds two hundred dollars (\$200), shall be constructed or repaired except on the order of the board of county commissioners; and when ordered to be constructed or repaired it may be done by contract; provided, that such construction shall be done according to the standard plans and specifications adopted and established by the state highway commission, and copies of which shall be on file at all times in the office of the county clerk in each county of the state; provided, however, that whenever such plans so furnished cannot be applied, the county commissioners shall have prepared such necessary plans and specifications which shall be on file in the office of the county clerk thirty days prior to the letting of any such contract. [Amendment approved March 10, 1915; Laws 1915, p. 332.]

§ 1384. Letting of Contract.

(Section 4.) All bids must be sealed, opened at the time specified in the notices, and a contract awarded to the lowest bidder. The board of county commissioners may, however, reject any and all bids; provided, however, that if the state highway commission shall have adopted or established a standard plan and specification, the bids must be submitted upon such standard plan so adopted and established. The contract and bond for its performance must be entered into and approved by the said board, except in cases of great emergency, and by the unanimous consent of all its members. The said board may proceed at once to construct, replace, and repair any and all structures of whatever nature without notice. [Amendment approved March 10, 1915; Laws 1915, p. 332.]

§ 1385. Construction of Bridges Crossing County Lines.

(Section 5.) Bridges crossing the line between counties must be constructed by the counties into which said bridges reach, and each of the counties must pay such portion of the cost as has been previously agreed upon by the board of county commissioners of the respective counties. [Amendment approved March 10, 1915; Laws 1915, p. 333.]

CHAPTER VI.

OBSTRUCTIONS AND ENCROACHMENTS ON HIGHWAYS.

§ 1386. Construction of Sidewalks—Damage to Sidewalk by Team.

(Section 1.) Any owner or occupant of land may construct a sidewalk on the highway along the line of his land, subject, however, to the authority conferred by law on the board of county commissioners and the road supervisors; and any person using said sidewalk with mule, horse, or team without permission of the owner is liable to such owner or occupant in the sum of five dollars for each trespass, and for all damages suffered thereby. [Amendment approved March 10, 1915; Laws 1915, p. 333.]

§ 1387. Fences and Buildings Encroaching upon Highway.

(Section 2.) If any highway duly laid out or erected is encroached upon by fences, buildings, or otherwise, the road supervisor of the district must give notices, orally or in writing, requiring the encroachment to be removed from the highway. [Amendment approved March 10, 1915; Laws 1915, p. 333.]

§ 1388. Notice to Remove Encroachment.

(Section 3.) Notice must be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence, if he be known to the person giving such notice and resides in the county; if not, it must be posted on the encroachment specifying the breadth of the highway, the place and extent of the encroachment, and requiring him to remove the same forthwith. [Amendment approved March 10, 1915; Laws 1915, p. 333.]

§ 1389. Penalty for Failure to Remove Encroachment Promptly.

(Section 4.) If the encroachment is not removed forthwith, or commenced to be removed forthwith, and the removal is not diligently prosecuted, the one who caused, owns, or controls the encroachment forfeits ten dollars for each day the same continues unremoved. If the encroachment is such as to effectually obstruct and prevent the use of the highway for vehicles, the road supervisor must forthwith remove the same. [Amendment approved March 10, 1915; Laws 1915, p. 333.]

A road supervisor is personally answerable in damages for personal injuries sustained by reason of his negligent failure to repair, or give notice of a defect in a

public highway, which had been known to him for several months prior to such injuries. *Smith v. Zimmer*, 45 Mont. 282, 301, 125 Pac. 420.

§ 1390. Action to Remove or Abate Encroachment—Costs and Damages.

(Section 5.) If the encroachment is denied and the owner, occupant, or person controlling the matter or thing charged with being an encroachment, refuses either to remove or permit the removal thereof, the road supervisor must commence in the proper court an action to abate the same as a nuisance; and if he recovers judgment, he may in addition to having the same abated, recover ten dollars for every day such nuisance remained after such notice, and also his costs in said action. The board of county commissioners may at any time order the supervisor to forthwith remove any encroachment without commencing an action. [Amendment approved March 10, 1915; Laws 1915, p. 333.]

Editorial Notes.

Obstructions upon any part of highways as nuisances. 38 Am. Rep. 127.

Obstruction of highways, injunction

against on behalf of private citizens. 52 Am. Rep. 574.

Right of private citizen to recover damages for obstructing highway. Ann. Cas. 1914C, 1128.

§ 1391. Removal of Encroachment at Expense of Owner.

(Section 6.) If this encroachment is not denied, but is not removed for five days after the notice is complete, the road supervisor may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, and also for each day the same remained after notice was complete, the sum of ten dollars in an action for that purpose. [Amendment approved March 10, 1915; Laws 1915, p. 334.]

§ 1392. Liability for Permitting Water to Overflow Highway.

(Section 7.) Any person storing or distributing water for any purpose who permits the water to overflow any highway to the injury thereof, must, upon notification by the board of county commissioners or the road supervisor of the district where such overflow occurred, repair the damages occasioned by overflow; and should such repairs not be made within a reasonable time by such person the road supervisor must make such repairs

and recover the expense thereof from such person in an action at law. [Amendment approved March 10, 1915; Laws 1915, p. 334.]

§ 1393. Excavations Across Highway—Permit and Bridges.

(Section 8.) All persons contemplating the excavation of irrigating, mining, drainage, or other ditches across the public highways are required to obtain a permit in writing from the board of county commissioners or the supervisor of said district before beginning such excavations, and to bridge such irrigation, mining, drainage, or other ditches at once, substantially and in accordance with the plans and specifications furnished by the board of county commissioners; and thereafter said bridges shall be maintained by the county. And on failure or neglect to bridge as in this section provided, the supervisor of the road district must immediately remove any obstruction placed there, and refill such ditch, if necessary for the convenience of the traveling public. [Amendment approved March 10, 1915; Laws 1915, p. 334.]

§ 1394. Duty of Person Finding Obstruction upon Highway.

(Section 9.) It shall be the duty of any person finding any obstruction upon any highway of this state to forthwith notify the road supervisor of such obstruction. [Amendment approved March 10, 1915; Laws 1915, p. 334.]

§ 1395. Removal of Tree Fallen into Highway.

(Section 10.) Whoever cuts down a tree so that it falls into any highway must forthwith remove the same, and is liable to a penalty of ten dollars for every day the same remains in such highway. [Amendment approved March 10, 1915; Laws 1915, p. 334.]

§ 1396. Limit of Speed Posted on Bridges.

(Section 11.) Road supervisors must, when ordered by the board of county commissioners so to do, put upon bridges under their charge notices that there is "Five Dollars Fine for Riding or Driving on This Bridge Faster Than a Walk." Whoever thereafter rides or drives faster than a walk on such bridge is liable to pay five dollars fine for each offense. [Amendment approved March 10, 1915; Laws 1915, p. 334.]

§ 1397. Malicious Injury to Shade Trees.

(Section 12.) Whoever digs up, cuts down, or otherwise maliciously injures or destroys any shade or ornamental tree on any highway, unless the same is deemed an obstruction by the board of county commissioners and removed under their direction, forfeits one hundred dollars for each tree. [Amendment approved March 10, 1915; Laws 1915, p. 335.]

§ 1398. Penalty for Obstructing or Injuring Highway—Notice to County Attorney.

(Section 13.) Whoever obstructs or injures or causes to be obstructed or injured any highway, or diverts or causes to be diverted any water-courses thereon, or drains or causes to be drained any water from his land upon any highway, to the injury thereof, is liable to a penalty of ten dollars for each day such obstruction or injury remains, and must be punished as provided in section 8736 of the Revised Codes. It shall be the duty of

the road supervisor to notify the county attorney of any and all violations of this act. [Amendment approved March 10, 1915; Laws 1915, p. 335.]

§ 1399. Dumping Garbage upon or Near Highway.

(Section 14.) It shall be unlawful for any person or persons to dump or leave any garbage or dead animal in or upon any public highway, road, or alley of this state, or within two hundred yards of such public highway, road, or alley. Any person found guilty of a violation of this section shall be fined in a sum not exceeding twenty-five dollars (\$25), or imprisoned in the county jail for a period not exceeding thirty days, or be punished by both such fine and imprisonment, in the discretion of the court. [Amendment approved March 10, 1915; Laws 1915, p. 335.]

§ 1400. Depositing Glass, Nails or Other Dangerous Articles in Highway.

(Section 15.) It shall be unlawful for any person or persons to deposit any crockery or glass, nails, tacks, or any other article that would tend to injure horses' feet or automobile tires in or upon any highways, road, or alley in this state. Any persons guilty of a violation of this section shall be fined in a sum not exceeding fifty dollars (\$50) or be imprisoned in the county jail for a period not exceeding sixty days, or be punished by both such fine and imprisonment in the discretion of the court. [Amendment approved March 10, 1915; Laws 1915, p. 335.]

§ 1401. Prosecution of Offenses by County Attorney.

(Section 16.) The county attorneys upon complaint of the road supervisor, or any other person, must prosecute all actions under the provisions of this act by a suit in the name of the state and all penalties and forfeitures must be paid into the general fund of the county. [Amendment approved March 10, 1915; Laws 1915, p. 335.]

CHAPTER VII.

GUIDE-BOARDS.

§ 1402. Erection and Maintenance of Guide-boards Along Highway.

(Section 1.) The several boards of county commissioners in the state of Montana shall erect, or cause to be erected, within six months after the passage of this act, and maintain at the expense of the county, suitable guide-boards at or within one hundred feet from forks of all public highways within their respective counties. Said guide-boards shall contain a suitable inscription indicating the way and naming the approximate or true distance to one or more of the nearest cities, towns, villages, or other known points situated on said road; provided, however, that not more than four guide-boards shall be placed within any one incorporated town or village of any county of this state. They must be of suitable size to contain the inscription, the background of which must be white. The letters contained in the inscription thereon shall be black at least two inches in height, and legible. [Amendment approved March 10, 1915; Laws 1915, p. 335.]

§ 1403. Size and Fastening of Guide-board.

(Section 2.) Said guide-boards to be securely fastened to posts at least six inches in diameter at the butt, and at least eight feet in length, and planted in the ground so that said post shall be when erected at least

six feet high above the ground. [Amendment approved March 10, 1915; Laws 1915, p. 336.]

§ 1404. Malicious Injury to Guide-boards.

(Section 3.) Every person who maliciously removes or injures any guide-board, erected upon any highway, or any inscription on such, or defaces the same in writing or in any other manner, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in any sum not less than ten dollars (\$10) nor more than twenty-five dollars (\$25), and costs of suit. Said fine, when collected shall be paid into the county treasury for road purposes. [Amendment approved March 10, 1915; Laws 1915, p. 336.]

CHAPTER VIII.

LAWS OF THE ROAD.

§ 1405. Rules upon Meeting of Vehicles.

(Section 1.) When vehicles meet, the driver of each must turn reasonably to the right of the center of the highway or road, so as to pass without interference, under the penalty of twenty-five dollars (\$25) for every neglect, to be recovered by the party injured. Where the whole breadth of the roadway is not worked, the center of the worked part is the center of the highway. In times of snow where there is a beaten track the center of that is the center of the highway or road. But this section does not apply to vehicles meeting cars running on rails or grooved tracks. [Amendment approved March 10, 1915; Laws 1915, p. 336.]

Editorial Notes.

Law of the road as to vehicles going

in same direction. Ann. Cas. 1913A, 833; Ann. Cas. 1913E, 1121.

§ 1406. Drunkards not to be Employed as Drivers.

(Section 2.) No person must employ to drive any vehicle for the conveyance of passengers upon any public highway or road, a person addicted to drunkenness, under penalty of five dollars (\$5) for every day such person is in his employ. [Amendment approved March 10, 1915; Laws 1915, p. 336.]

§ 1407. Intoxicated Drivers to be Discharged.

(Section 3.) If any person while actually employed in driving any vehicle is intoxicated to such a degree as to endanger the safety of his passengers, the owner, on receiving from any passenger a written notice of the fact, verified by his oath, must forthwith discharge such driver, and if he have such driver in his service within six months after such notice, he incurs a like penalty. [Amendment approved March 10, 1915; Laws 1915, p. 336.]

§ 1408. Duty of Driver to Guard Against Runaways.

(Section 4.) The driver of any vehicle used to convey passengers must not leave the horses attached thereto while passengers remain in the same, without first fastening the horses or placing the lines in the hands of some other person, so as to prevent their running, under a penalty of twenty dollars (\$20) for each offense. [Amendment approved March 10, 1915; Laws 1915, p. 337.]

§ 1409. Liability of Owner of Vehicle for Negligence of Driver.

(Section 5.) The owner of every vehicle running or traveling upon any highway or road for the conveyance of passengers, is liable for all damage to person or property done by any person in his employment as a driver while driving such vehicle, whether done willfully or negligently, or otherwise, in the same manner as such driver would be liable. [Amendment approved March 10, 1915; Laws 1915, p. 337.]

§ 1410. Moving Heavy Machines or Load Along Highways or Over Bridges.

(Section 6.) All persons owning, controlling, operating, or managing threshing-machines, steam engines, sawmills, or any heavy loads of whatever kind or nature, are required in moving the same over the public highways to lay down planks not less than one foot wide, three inches in thickness, and of sufficient length, on the floors of all bridges and culverts situated on the public highways, while crossing the same, for the wheels of said threshing machines, sawmills, steam engines, or other vehicles carrying heavy loads of any kind to run on; provided, that this section shall not apply to any threshing-machine, sawmills, steam engine, or other vehicle carrying heavy loads not exceeding six tons in weight. [Amendment approved March 10, 1915; Laws 1915, p. 337.]

§ 1411. Moving Steam Engines and the Like Along Highways.

(Section 7.) All persons owning, controlling, operating, or managing threshing-machines, sawmills, or steam engines of any kind, are required in moving the same along the public highways, or meeting any person or persons on horses or mules, or in vehicles drawn by horses or mules, to shut off the steam and halt until such horses or mules shall have safely passed. [Amendment approved March 10, 1915; Laws 1915, p. 337.]

§ 1412. Penalty for Violation of Two Preceding Sections.

(Section 8.) Any person or persons violating the provisions of the two preceding sections shall be guilty of a misdemeanor, and shall, on conviction thereof, be fined in a sum not less than five dollars (\$5) nor more than one hundred fifty dollars (\$150). [Amendment approved March 10, 1915; Laws 1915, p. 337.]

CHAPTER IX.**MOTOR VEHICLES.****§ 1413. Display of Tags With License Number Thereon.**

(Section 1.) Every person owning any motor vehicle (other than traction engines, road-rollers and vehicles running on rails or tracks) shall, at the time of paying for and procuring the license thereon as provided by law, equip said motor vehicle with a suitable tag of a permanent character, the dimensions of which shall not be less than twelve inches long and four inches wide, said tag to be exhibited on the rear end of said motor vehicle at all times, and the number of said tag must correspond with the current number of said license issued to the said motor vehicle. [Amendment approved March 10, 1915; Laws 1915, p. 337.]

Editorial Notes.

Effect on rights and liabilities of owner
or driver of automobile of failure

to comply with statutory regulations
as to registration, license, displaying
numbers, etc. Ann. Cas. 1914A, 128.

§ 1414. Speed Limit of Motor Vehicles.

(Section 2.) No automobile or other motor vehicle shall be run on any public highway outside of the limits of any city, fire district, or thickly settled or business part of a town, at a speed exceeding thirty miles an hour; and no such vehicle shall be run on any public way within the limits of a city, fire district, or of any thickly settled or business part of a town at a speed exceeding eight miles an hour. [Amendment approved March 10, 1915; Laws 1915, p. 338.]

§ 1415. Precautions by Driver of Motor Vehicle on Meeting Horses.

(Section 3.) Every person having control or charge of a motor vehicle shall, whenever upon any public street or highway and approaching any vehicle drawn by horse or horses, mule, or mules, or any horse or mule upon which any person is riding, so operate, manage, and control such motor vehicle as to exercise every reasonable precaution to prevent the frightening of any such animals and to insure the safety and protection of any person riding or driving the same. And if such animals or any thereof appear frightened, the person in control of such motor vehicle shall reduce its speed, and if requested by signal or otherwise by the driver of such animal or animals, unless such movement be necessary to avoid accident or injury, or until such animal or animals appear to be under the control of the rider or driver. [Amendment approved March 10, 1915; Laws 1915, p. 338.]

§ 1416. Speed at Crossings.

(Section 4.) Upon approaching a crossing of intersecting ways, and also in traversing the crossing or intersection, the person in control of a motor vehicle shall run it at a rate of speed less than that above specified, and not greater than is reasonable and proper having regard to the traffic and the use of the intersecting ways. [Amendment approved March 10, 1915; Laws 1915, p. 338.]

§ 1417. Motor Vehicle Defined.

(Section 5.) The term "motor vehicle" in this act shall include all vehicles propelled by any power other than muscular power, excepting railroad and railway cars and motor vehicles running only upon rails or tracks. [Amendment approved March 10, 1915; Laws 1915, p. 338.]

§ 1418. Penalty for Violation of Act.

(Section 6.) Any person violating any provisions of this act shall be punished for each offense by a fine not exceeding one hundred dollars, or by imprisonment for a term not exceeding sixty days, or by both such fine and imprisonment. [Amendment approved March 10, 1915; Laws 1915, p. 338.]

§ 1419. Duty of Driver to Permit Overtaking Vehicle to Pass.

(Section 7.) Any vehicle of any kind drawn by horses or propelled by steam or gasoline, or any other power, overtaking a vehicle on the public highway upon the party desiring to pass giving warning to the first vehicle of such desire, the said first vehicle shall make reasonable effort to give the second vehicle half the road within which to pass. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and shall pay a fine not exceeding twenty-five dollars (\$25) to be recovered by

the party injured, or by imprisonment for a term not exceeding sixty days, or by both such fine and imprisonment. [Amendment approved March 10, 1915; Laws 1915, p. 339.]

CHAPTER X.

DISPOSITION OF FINES.

§ 1420. Disposition of Fines.

(Section 1.) Any and all fines collected for the violation of any of the provisions of this act, shall belong to the general road fund of the county and shall, immediately after their collection, be paid over by the court or magistrate collecting the same, to the county treasurer for the use and benefit of that fund. [Amendment approved March 10, 1915; Laws 1915, p. 339.]

CHAPTER XI.

REPEALING CLAUSES.

§ 1421. Repealing Clause.

(Section 1.) Sections 1337, 1338, 1340, 1341, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1371, 1372, 1390, 1392, 1393, 1394, 1395, 1396, 1405, 1410, 1427, 1430, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1454 and 1456 of the Revised Codes, and that certain act approved March 11, 1909, entitled "An act to provide for the permanent improvement of main highways by extension of county aid for such purposes, to provide the manner of petitioning for such improvement, for the levying of assessments, upon lands benefited thereby for the payment of a part of the cost thereof," as well as that certain act approved March 9, 1909, entitled "An act placing the highways and bridges in counties of the first class under the supervision and control of the county surveyor, defining his powers and duties, fixing his compensation and abolishing the office of the road supervisor in counties of the first class," are each and all hereby repealed. [Amendment approved March 10, 1915; Laws 1915, p. 339.]

MOTOR VEHICLES.

§ 1422. Registration and Regulation of Motor Vehicles—Definition of Terms.*

(Section 1.) The term "motor vehicle" as used in this act, except where otherwise expressly provided, shall include all vehicles propelled by any power other than muscular power, except traction engines, road-rollers, fire wagons and engines, police patrol-wagons, ambulances and such vehicles as run only upon rails or tracks.

The term "local authorities" shall include all officers of counties, boroughs, cities, villages or towns, as well as all boards, committees, and other public officials of such counties, boroughs, cities, villages or towns.

The term "chauffeur" shall mean any person operating a motor vehicle for hire or as the employee of the owner thereof.

*Sections 1422-1435 embrace chapter 73 of the Laws of 1913, entitled "An act providing for the registration, identification

and regulation of motor vehicles, operated and driven upon the public roads and highways of this state."

The term "state" as used in this act, except where otherwise expressly provided, shall include the territories and the federal districts of the United States.

The term "owner of" or "persons hereafter acquiring" shall include any person renting a motor vehicle or the exclusive use thereof, under a lease or otherwise for a period greater than thirty days. The term "closely built up" shall mean the territory of a city, county, town, village or borough bordering on a public road or highway, devoted to business or residential purposes, where the structures devoted to business or residential purposes shall be on an average less than one hundred feet apart for a distance not less than a quarter of a mile. [Approved March 12, 1913; Laws 1913, c. 73, p. 161.]

§ 1423. Application for Registration of Vehicle—Fee and Certificate—Registration Lists.

(Section 2.) Subdivision 1. Every owner of and every person hereafter acquiring a motor vehicle or vehicles which shall be operated or driven upon the public roads or highways of this state shall for each motor vehicle owned or acquired, except as herein otherwise expressly provided, cause to be filed by mail or otherwise, upon the payment of a registration fee of two dollars (\$2), in the office of the Secretary of State, a verified application for registration, containing:

First.—A brief description of the vehicle to be registered, including the name of the manufacturer, the manufacturer's number of the motor vehicle, if number there be, the character of the motor-power, and the amount of such motor-power stated in figures of horse-power.

Second.—The name and address of the owner of such motor vehicle, and the name of the county of the state in which he resides.

Subdivision 2. Upon the filing in the office of the Secretary of State of an application, as hereinbefore provided, the Secretary of State or his duly authorized agent shall assign to such motor vehicle as described in such application a distinctive number, and shall issue to the owner of such motor vehicle, as it is described in the application filed, a certificate of registration, which certificate shall be in the form of a card which may be carried in the pocket and which certificate shall contain the distinctive number so assigned to such motor vehicle, the name and address of the owner, a brief description of such motor vehicle, stating the name of the manufacturer, the manufacturer's number, if number there be, the character of the motor-power, and the amount of such motor-power stated in figures of horse-power.

Subdivision 3. Upon the receipt of an application for registration of a motor vehicle, as hereinbefore provided, the Secretary of State shall, thereupon, file such application in his office, and register such motor vehicle, with the name and address of the owner thereof, and the facts stated in the application, in a book or index to be kept for the purpose, under the distinctive number and identification mark assigned to such motor vehicle by the Secretary of State, satisfy himself that the verified statements made in such application are correct, and issue to the applicant a certificate as hereinbefore provided. The original book or index in which motor vehicles are registered as hereinbefore provided, shall be kept in the office of the Secretary of State, and shall be open to the inspection of any person during reasonable business hours. An exact, full and accurate list of registered motor vehicles and their owners shall be furnished by the Secretary of State

to the clerk of every county in the state, and such lists shall be kept as public records in the office of each county clerk, and the Secretary of State shall further furnish to the county clerk of each county once each month copies of the additional applications for registration received, which shall be entered by the county clerk on the list kept by him, as hereinbefore provided. [Approved March 12, 1913; Laws 1913, p. 162.]

§ 1424. Display of Number on Vehicle.

(Section 3.) That every motor vehicle, registered in accordance with the provisions of this act, shall have the distinctive number and registration mark assigned to it by the Secretary of State, as hereinbefore provided, displayed on the front and rear of such motor vehicle, as an identification mark, securely fastened, so as not to swing, and it is further provided, that such distinctive number as an identification mark shall consist of a metal plate not less than six inches wide and not less than fifteen inches long, upon the face of which shall appear the distinctive number assigned such motor vehicle by the Secretary of State, the numerals of which shall not be less than four inches long nor each stroke less than one-half inch in width. Such number to be followed on the plate by the letters "Mon" and the number of the year for which such plate is issued. The color of the background numerals and lettering upon such plate shall be designated each year by the Secretary of State. [Approved March 14, 1915; Laws 1915, p. 92.]

§ 1425. Application by Manufacturer for Registration of Vehicles.

(Section 4.) That in the case of a manufacturer or dealer in motor vehicles such manufacturer or dealer shall make application for registration in the same manner as hereinbefore provided, of each style or type of motor vehicle manufactured or dealt in by such manufacturer or dealer, whereupon, upon the payment of a registration fee of ten dollars (\$10), there shall be assigned to such style or type of motor vehicle a distinctive number as an identification mark, which shall be carried and displayed by every motor vehicle of such style or type registered in the same manner as hereinbefore provided, and there shall be issued to such manufacturer or dealer a certificate of registration as hereinbefore provided for each style or type of motor vehicle, and as many certified copies thereof as may be desired, upon the payment of a fee of fifty cents (.50) for each such copy. [Approved March 12, 1913; Laws 1913, p. 164.]

§ 1426. Brakes, Horns, Lights and Nonskid Devices for Vehicles.

(Section 5.) Subdivision 1. Every motor vehicle operated and driven upon the public roads or highways of this state shall be provided with adequate brakes sufficient to control the vehicle at all times, and a suitable and adequate horn or other device for signaling, and shall during the period from one hour after sunset to one hour before sunrise, display two lighted, white-light lamps on the front of such motor vehicle, the light of which front lamp shall be visible at least two hundred feet in the direction in which said motor vehicle is proceeding, and every motor vehicle shall also display, in addition to the foregoing, a red light on the rear thereof.

Subdivision 2. Every motor vehicle operated and driven upon the public roads or highways of this state when such public roads or highways are in a wet, slippery or slimy condition, or in such condition that motor

vehicles operated and driven thereon slide, skid, slip or have a tendency to get beyond control, shall have fitted upon at least one of the rear tires of such motor vehicles at such time or times, a tire chain or such other contrivance as shall be adequate and sufficient to prevent said motor vehicles from skidding, slipping or sliding, and such as shall not cause any considerable damage to the public road or highway. [Approved March 12, 1913; Laws 1913, p. 164.]

§ 1427. Nonresidents Exempt from Regulation.

(Section 6.) The provisions of the foregoing sections shall not apply to motor vehicles owned by nonresidents of this state, provided that the owners thereof shall have complied with the provisions of the law of the state of their residence in regard to motor vehicles, and shall comply with such law while operating and driving a motor vehicle upon the public roads or highways of this state; provided, however, that the foregoing sections of this act are substantially in force as law in the state of the residence of the owner of such motor vehicle, otherwise all provisions of this act shall apply. [Approved March 12, 1913; Laws 1913, p. 165.]

§ 1428. Speed Limit on Highways.

(Section 7.) No person shall operate a motor vehicle on the public roads or highways of this state at a rate of speed greater than is reasonable or proper, having regard to width, traffic and the use of the highway and the general and usual rules of the road, or so as to endanger property or the life or limb of any person. [Approved March 12, 1913; Laws 1913, p. 165.]

§ 1429. Registration and Badges of Chauffeurs.

(Section 8.) Subdivision 1. Every person, hereafter desiring to operate a motor vehicle, as a chauffeur, shall file, in the office of the Secretary of State, upon the payment of a registration fee of two dollars (\$2), a verified application for registration which shall state:

First.—The name and address of the applicant, and that he is competent to operate a motor vehicle.

Second.—The trade name and motor-power of the motor vehicle or vehicles he is competent to operate.

Third.—Whether or not the applicant has ever been previously convicted of a violation of any of the provisions of this act, giving the date and place of such conviction and the provisions of this act violated, if any.

Subdivision 2. Upon the receipt of such an application, the Secretary of State shall thereupon file the same in his office or in a book or index, which shall be kept in the same manner as the book or index for the registration of motor vehicles, as hereinbefore provided, and the Secretary of State shall forward the list of such registered chauffeurs, and such additions thereto as shall be made from time to time to the county clerk of every county in the state, in the same manner as hereinbefore provided, in the case of registered motor vehicles, and such lists shall be kept as public records in the county clerk's office in every county of the state.

Subdivision 3. The Secretary of State shall forthwith upon the registration of such chauffeur as hereinbefore provided, issue to such chauffeur a badge of aluminum or other suitable metal which shall be oval in form and the greater diameter of which shall not be more than two inches, and

such badge shall have stamped thereon the words "Registered Chauffeur No. . . . ; State of Montana"; with the registration number inserted therein, which badge shall thereafter be worn by such chauffeur pinned upon his clothing in a conspicuous place at all times while he is operating a motor vehicle upon the public roads or highways of this state.

Subdivision 4. No chauffeur, having registered, as hereinbefore provided, shall voluntarily permit any other person to wear his badge, nor shall any person while operating a motor vehicle upon the public roads or highways of this state wear any chauffeur's badge, belonging to another person, or a fictitious chauffeur's badge.

Subdivision 5. No person shall operate a motor vehicle as a chauffeur upon the public roads or highways of this state, after thirty days after this act takes place, unless such person shall have complied in all respects with the requirements of this section; provided, however, that a nonresident chauffeur, who has registered under the provisions of the law of the state of his residence, which are substantially similar to the provisions of this section shall be exempt from registration under this section; provided, however, that he wear the badge assigned to him in the state of his residence, in the same manner as hereinbefore provided, and comply with all the other provisions of this section.

Subdivision 6. No chauffeur or other person shall drive or operate any motor vehicle upon any public road or highway in this state in the absence of the owner of such motor vehicle, without such owner's consent; and no chauffeur or other person having the care of a motor vehicle for the owner shall receive or take directly or indirectly any bonus, discount or other consideration for the purchase of supplies or parts for such motor vehicle or for work or labor done thereon by others; and no person furnishing such supplies or parts, work or labor, shall give or offer any such chauffeur or other person having the care of a motor vehicle for the owner thereof, either directly or indirectly, any bonus, discount or other consideration. [Approved March 12, 1913; Laws 1913, p. 165.]

§ 1430. Regulations by Local Authorities.

(Section 9.) No local authority shall have any power except as herein otherwise expressly provided, to make any ordinance, by-law or resolution, respecting motor vehicles, or their speed upon, or use of the public roads or highways of this state, and no ordinance, by-law, or resolution heretofore or hereafter made by any local authority, respecting motor vehicles shall have any force and effect; provided, however, that powers given to any town, city or borough to regulate shows, processions, assemblages or parades, in the streets and public places, and to regulate the use of public parks, and all ordinances, by-laws and regulations, which may have been or which may be enacted in pursuance of said powers, shall remain in full force and effect; provided, further, that local authorities may set aside for a given time a specific public highway for speed tests or races [races] to be conducted under proper restrictions for the safety of the public. [Approved March 12, 1913; Laws 1913, p. 167.]

§ 1431. Violations of Law—Penalty.

(Section 10.) Subdivision 1. The violation of sections 2, 3, 4, 5 and 7 of this act shall be punishable by a fine not exceeding twenty-five (\$25) dollars for a first offense, by a fine not less than twenty-five (\$25) dollars

and not exceeding fifty (\$50) dollars for a second offense, and by a fine not less than fifty (\$50) dollars and not more than one hundred (\$100) dollars for a third or any subsequent offense.

Subdivision 2. Any person operating or driving a motor vehicle on the highways of this state, which shall display thereon a distinctive number or identification mark belonging to any other motor vehicle, or one which is fictitious, shall be deemed guilty of a misdemeanor, which shall be punishable by a fine of not more than one hundred (\$100) dollars for a first offense, and for any subsequent offense by a fine of not less than one hundred (\$100) dollars, nor more than three hundred (\$300) dollars.

Subdivision 3. Any violation of section 8 of this act, except in regard to subdivision 6 thereof, by a person not registered as a chauffeur, as hereinbefore provided, shall be punishable by a fine of fifty (\$50) dollars, or the suspension of the right to apply for registration as a chauffeur, under this act, for one year or both, and for a second or subsequent offense by a fine of one hundred (\$100) dollars, and in addition the suspension of the right to apply for registration as a chauffeur for a time not less than one year, and not more than two years.

Subdivision 4. Any violation of section 8 of this act, except in regard to subdivision 6 thereof, by a chauffeur, registered as hereinbefore provided, shall be punishable by a fine not exceeding fifty (\$50) dollars, or by the suspension of the right to operate a motor vehicle as a chauffeur under the provisions of this act, for a period of six months, or both, and for a second or subsequent offense, by a fine of not less than fifty (\$50) dollars and not exceeding one hundred (\$100) dollars, and in addition the suspension of the right to operate a motor vehicle as a registered chauffeur under the provisions of this act for one year, and for such further time as shall be fixed by the trial court.

Subdivision 5. Any violation of section 7 of this act by a registered chauffeur shall be punishable by a suspension of the right to operate a motor vehicle as a registered chauffeur, as hereinbefore provided, for thirty days, for a second offense, and for a period of not less than one year for a third offense, in which case the registration of such chauffeur shall become null and void.

Subdivision 6. Any person violating any of the provisions of subdivision 6 of section 8 of this act shall be deemed guilty, and upon conviction shall be fined a sum not exceeding two hundred (\$200) dollars.

Subdivision 7. Upon the conviction of any person, for a violation of any of the provisions of this act, the magistrate or other judicial officer before whom the proceedings are held shall immediately certify the facts of the case and the character of the punishment to the Secretary of State, who shall enter the same, in the case of an owner or a chauffeur either in the indexes of registered motor vehicles, or registered chauffeurs, as the case may be, opposite the name of the person so convicted, and in the case of any other person, in an index of offenders to be kept for such purpose, in alphabetical order. The Secretary of State shall then send notice of the conviction and punishment of all such persons, whether owners, chauffeurs or other persons, to the county clerk of every county in the state, who shall enter the same upon the lists of registered motor vehicles, or registered chauffeurs, as the case may be, which are kept by him, as hereinbefore provided, or upon a list of other offenders which he shall maintain in his office as a public record in the same manner as the registered lists

of motor vehicles or chauffeurs, as hereinbefore provided for, and shall furnish copies of such lists to the magistrate or other judicial officers of his county by whom the offenses against the provisions of this act are punishable.

Subdivision 8. In case any person shall be taken into custody because of any violation of any of the provisions of this act, he shall forthwith be taken before any magistrate or any justice of the peace in any city or village or county, or before any accessible captain, sergeant of police or acting captain or sergeant of police, who shall have the powers of a magistrate or justice of the peace in carrying out the provisions of this act, and be entitled to an immediate hearing; and if such hearing cannot be had, be released from custody on giving his personal undertaking to appear in answer for such violation at such time or place as shall then be indicated, secured by the deposit of a sum equal to the maximum fine for the offense with which he is charged, or in lieu thereof, in case the person taken into custody is the owner, by leaving the motor vehicle, and in case the person taken into custody is not the owner, by leaving the motor vehicle with a written consent given at the time by the owner, who must be present, with such judicial officer; or in case such judicial officer is not accessible, be forthwith released from custody by giving his name and address to the person making the arrest, and depositing with such arresting officer a sum equal to the maximum fine for the offense for which such arrest is made, or in lieu thereof, in case the person arrested is the owner, by leaving the motor vehicle, and in case such person is not the owner, by leaving the motor vehicle with a written consent given at the time by the owner, who must be present; provided, that in such case the officer making the arrest shall give a receipt in writing for such sum or vehicle deposited, and notify such persons to appear before the most accessible magistrate, naming him, specifying the place and hour.

In case such undertaking with security or deposit shall not be made by an owner or other person taken into custody, the provisions of law in reference to bail in such cases shall apply. [Approved March 12, 1913; Laws 1913, p. 167.]

§ 1432. Disposition of Revenue from Registration Fees.

(Section 11.) Subdivision 1. The revenues derived from the registration fees provided for herein shall be applied by the Secretary of State to defraying the expenses incident to the carrying out and enforcement of the provisions of this act, and any surplus thereof shall be paid by the Secretary of State into the state treasury.

Subdivision 2. All fines and penalties collected under the provisions of this act shall be paid into the state treasury.

Subdivision 3. All moneys coming into the state treasury, pursuant to this section, shall there be maintained as a separate fund for the improvement, maintenance and repair of the public roads and highways of this state, and shall be apportioned as the state highway fund is now apportioned. [Approved March 12, 1913; Laws 1913, p. 170.]

§ 1433. Renewal of Registrations.

(Section 11a.) All registrations under this act shall expire on the thirty-first day of March of each year, and shall be renewed annually in the same manner and upon the payment of the same fee provided in this

act for original registrations, such renewals to take effect on the first day of April of each year. [Approved March 15, 1915; Laws 1915, p. 92.]

§ 1434. Repealing Clause.

(Section 12.) All acts and parts of acts in conflict herewith are hereby repealed. [Approved March 12, 1913; Laws 1913, p. 170.]

§ 1435. Name or Title of Act.

(Section 13.) This act [§§ 1422-1435 herein] shall be known as the "Montana State Motor Vehicle Law," and shall take effect thirty days after its passage and approval. [Approved March 12, 1913; Laws 1913, c. 73, p. 170.]

§ 1436. Owners of Motor Vehicles—Procurement of License and Fee Therefor.

(Section 1.) For the purpose of raising revenue for the constructing, maintenance, and improvements of public highways, every person now owning any motor vehicle, other than traction engines, road-rollers and vehicles running on rails or tracks shall, within sixty days after the passage and approval of this act, and every person hereafter acquiring such vehicle shall within thirty days after such acquisition, procure from the county treasurer of the county in which he resides, a license for each of such vehicles owned by him, and shall hereafter pay a license upon such vehicle as follows:

Five dollars (\$5) per annum for each of such vehicles having less than four wheels.

Ten dollars (\$10) per annum for all such vehicles having four or more wheels, rated up to and including twenty (20) horse-power.

Fifteen dollars (\$15) per annum for each of such vehicles over twenty (20) horse-power rated up to and including thirty (30) horse-power.

Twenty dollars (\$20) per annum for each of such vehicles over thirty (30) horse-power, which said license shall be payable on the first day of January of each year, or within thirty days after the acquisition and ownership of any such vehicle, provided that said license shall be in lieu of all licenses that may now be levied by town, city, county or state and provided further that said license shall follow the ownership of said vehicle until the expiration date of same. [Approved March 11, 1913; Laws 1913, c. 71, p. 137.]

§ 1437. Duty of County Treasurer as to Funds.

(Section 2.) It is hereby made the duty of the county treasurer of each county to collect all moneys under the provisions of this act and issue receipts for the payment thereof. All moneys so collected shall be divided as follows, one-half to the general road fund of the county in which said license was collected and one-half to the state highway fund. [Approved March 11, 1913; Laws 1913, c. 71, p. 137.]

§ 1438. Report of County Treasurer and Remittance to State Treasurer.

(Section 3.) The county treasurer of each county, shall, quarterly, make a report of all such licenses collected by him and transmit, together with such report, all funds collected by him, under this act, and belonging to the said state highway fund, to the state treasurer, who shall pass the

same to the credit of the state highway fund. [Approved March 11, 1913; Laws 1913, c. 71, p. 137.]

§ 1439. Operation of Machine Without License a Misdemeanor—Lien of License.

(Section 4.) Any person who shall use or operate any motor vehicle on a public street, alley, road or highway, without first having paid such license as provided in this act, shall be guilty of a misdemeanor, and such license shall be a first lien upon any such vehicle for which such license shall not have been paid. [Approved March 11, 1913; Laws 1913, c. 71, p. 137.]

HIGHWAY COMMISSION.

§ 1440. State Highway Commission—Appointment and Salary.*

(Section 1.) Within thirty days after the passage of this act, the Governor shall appoint a board of three commissioners, who shall constitute and be known as the Montana Highway Commission, and shall consist of the following members:

First: The Professor of Civil Engineering at the Montana State College of Agriculture and Mechanic Arts (ex officio).

Second: The state engineer (ex officio.)

Third: A civil engineer who is a trained and experienced road builder, who shall hold his office subject to the pleasure of the Governor, who shall act as secretary of said commission, who shall devote his entire time to the work and duties of said commission, and who shall receive a salary of not to exceed thirty-five hundred dollars (\$3500) per annum.

A majority of said commission shall constitute a quorum and be empowered to act on all matters pertaining to the duties of said commission. Each ex-officio member of said highway commission shall receive a per diem of ten dollars while said commission is in session.

The members of said highway commission shall also receive their actual and necessary expenses while away from their respective residences in discharge of their duties and the same shall be audited and allowed by said commission when sworn to and accompanied by necessary vouchers and before the state auditor shall be authorized to issue a warrant in payment for the same, provided, however, that no ex-officio member of said commission shall receive as compensation for his services and expenses a sum in excess of twelve hundred dollars, in any one year. [Approved March 13, 1913; Laws 1913, c. 78, p. 318.]

§ 1441. Duties, Meetings and Record of Commission.

(Section 2.) Within thirty days after their appointment, said commission shall meet and organize and elect one of its members as chairman and shall have a common seal. The members thereof shall have the power to administer oaths and shall be provided with a suitable office at the state capital. Said commission shall hold regular meetings not less than once each month, and said office shall, so far as practicable, be kept open during business hours. Said commission may also employ a stenographer at a salary of not to exceed seventy-five dollars (\$75) per month, to serve during the pleasure of the said commission.

The commission shall keep a record of every vote and official act of said commission, shall file and safely keep all maps and papers belonging

*Sections 1440 to 1451 embrace chapter 78 of the Laws of 1913.

to it. It shall be the duty of the said highway commission and their assistants to give such advice, assistance and supervision with regard to road construction, improvement and maintenance throughout the state as time and conditions will permit, and as the rules and regulations of the commission may prescribe.

Employees of said commission shall, in addition to the salaries herein provided for, be allowed and paid their actual and necessary expenses while away from their respective residences in discharge of their duties under the direction of said commission. All of the files and records of said commission shall, under responsible regulations, be kept open for public inspection, and certified copies thereof shall be received in evidence in any court.

The Attorney General of the state shall be an *ex-officio* attorney for the commission, and shall render to it such legal counsel, advice and services as it may from time to time require. [Approved March 13, 1913; Laws 1913, c. 78, p. 319.]

§ 1442. Maps of Roads and Territory.

(Section 3.) The board of county commissioners of each county in this state shall, within six (6) months after the passage of this act, be required to have prepared duplicate road maps showing, with approximate correctness, all public roads within said county, and also all public roads which constitute a part of the boundary between same and adjoining counties, and designate thereon such as of said roads as are, by said board, deemed of sufficient public importance to justify their improvement under this act, and which will, in their opinion, when so improved, provide an appropriate system of main or market roads within such county. One of said maps shall be filed with the county clerk and recorder of such county, and the other, duly certified to by said county clerk and recorder, shall be by the board of county commissioners forwarded to the office of the state highway commission, together with a statement of the location within such county of all deposits of road material and the nature and extent of the same so far as known, and said board shall forward to said commission, on its request, samples of such material. If the board of county commissioners of any county shall fail to prepare such map and statement for the state commission within the time stated, to forward said samples at its request, it shall be the duty of said commission to procure the necessary information and samples and prepare such map for its office, and deduct the amount thus expended from the amount of the first appropriation to such county. [Approved March 13, 1913; Laws 1913, c. 78, p. 321.]

§ 1443. Map to be Opened to Public Inspection—Classifications of Roads.

(Section 4.) The state highway commission shall, on or before January 1, 1914, prepare and keep on file in its office, subject to public inspection, a map showing all open public roads in each county in the state and in color, all roads and proposed roads which the said commission deem of sufficient public importance to entitle them to state aid in their construction, maintenance and improvement under this act, and which, when completed, will provide an adequate system of state roads to the various market and business centers of the state and connect such centers with each other.

The highway commission, co-operating with the county commissioners of the respective counties, may divide such roads into two classes, one class

to include those of primary importance, and the other of secondary importance and unless otherwise ordered the roads of primary importance shall be first constructed or improved, and the map so prepared shall be followed, unless otherwise changed by order of said commission.

All roads constructed or improved under this act shall be known and designated as state roads. [Approved March 13, 1913; Laws 1913, c. 78, p. 321.]

§ 1444. State Highway Fund.

(Section 5.) For the purpose of state aid in the construction, improvement and maintenance of public highways under this act and for the maintenance and administration of said commission there is hereby created a state road fund to be known as the state highway fund. [Approved March 13, 1913; Laws 1913, c. 78, p. 321.]

§ 1445. Appropriation for Highway Commission—Accounts and Expenditures.

(Section 6.) There is hereby appropriated out of the general fund of the state, five thousand dollars (\$5,000), or so much thereof as may be necessary to pay the expenses of said commission and salaries and expenses of its employees until the amount credited to the state highway fund is available, and thereafter such salaries and expenses shall be paid out of the state highway fund. [Approved March 13, 1913; Laws 1913, c. 78, p. 321.]

§ 1446. No Officer or Employee to be Interested in Contracts.

All accounts and expenditures shall be certified by the chairman of said commission and paid by the state treasurer upon orders drawn by the state auditor.

(Section 7.) No member of the state highway commission nor any person in the employ of the highway commission, shall be either directly or indirectly interested in any contract for constructing, improving or maintaining any road under this act. [Approved March 13, 1913; Laws 1913, c. 78, p. 321.]

§ 1447. Apportionment of Highway Fund Among Counties.

(Section 8.) On or before the first Tuesday in March of each year, the highway commission shall apportion the state highway fund among the different counties of the state, as herein provided and shall immediately send a notice to the board of county commissioners of each county, stating the amount that each county shall be entitled to receive for said year, out of said fund; provided, however, that the estimates of the expense of the said highway commission, for the fiscal year be deducted from said fund before said apportionment be made.

In making an estimate of the amount of the state highway fund, accruing to the several counties in the state, and determining the amounts to be expended in any one county, the said highway commission shall take into consideration the extent of the area in such county, the amount of money expended by it in road construction, the difficulty and expense of such road construction, and the extraordinary expenses connected with the development of new territory; provided, however, that no money shall be expended by said commissions out of said funds upon roads within the corpo-

rate limits of any city or town, nor expended in any county in which the county commissioners of such county have not provided for the raising, by taxation by said county, of an amount equal to the amount set aside by the said highway commission for the construction, improvement and maintenance of state roads in said county, and in the event that the county commissioners of any county shall not within ninety (90) days after the mailing of the said notice above provided for, notify said highway commission of the amount said county will expend for said year upon state roads, the amount set aside for said county for said year may be distributed by the said highway commission among the other counties in the state which have so complied with the act.

In the event any road designated by the highway commission for improvement as a state road, is located on the boundary between two counties, it shall be the duty of the county commissioners of each county to provide for the payment of the respective counties for the construction, improvement and maintenance of such boundary road, and, in case either of said counties shall fail to make the necessary provisions for the payment of its proportion of the construction, improvement and maintenance of said road, the highway commission may pay for the work expended upon said road, and deduct from the amount apportioned for state roads in the county failing to make such provision, such county's proportion of the amount paid by the state in the construction of said road. [Approved March 13, 1913; Laws 1913, c. 78, p. 321.]

§ 1448. Regulations for Improvement of Road—Materials.

(Section 9.) As soon as practicable after the passage of this act, the highway commission shall ascertain the location of the road material available throughout the several parts of the state and the best method of road construction for the various sections of the state, as far as the same may be practicable, and shall prepare and adopt such rules and regulations for the construction, improvement and maintenance of state roads as shall be most suitable for the requirements of, and bring the most practicable results to the several parts of the state.

Such rules and regulations shall be printed and not less than fifty copies thereof forwarded to the county commissioner of each county in the state for distribution therein.

Such rules and regulations may be amended from time to time, and on the first day of March in each year, not less than fifty copies of such amended rules and regulations shall be forwarded to the county commissioners of each county. [Approved March 13, 1913; Laws 1913, c. 78, p. 323.]

§ 1449. Duties of County Commissioners as to Construction and Improvement Work—Engineer and Road Builder—Award of Contracts—Contractor's Bond—Payment for Work.

(Section 10.) The board of county commissioners of the several counties shall make the necessary surveys, establish grades, prepare plans and specifications and preliminary estimates of cost for all work upon state roads within their respective counties, in accordance with the rules and regulations adopted by the state highway commission and report the same to said commission. The state highway commission may make such changes therein as they may see fit, or adopt the same without change, or may order

such further surveys, plans and specifications or estimates as in their opinion may be necessary, and said road shall be constructed or improved according to the plans, specifications and estimates finally approved by said commissioners.

All road construction, improvements or maintenance on state roads in the several counties shall be under the direction of the board of county commissioners of the county in which the work is done, in accordance with the rules and regulations and subject to the supervision and approval of the state highway commission, provided, that if any such construction, improvement or maintenance is upon a road on the boundary between two counties the boards of county commissioners of said counties shall determine by mutual agreement the portion of said road to be constructed, improved or maintained by each, and if said boards cannot agree, said apportionment shall be made by the state highway commission. For the purpose of carrying out the provisions of this act, the board of county commissioners of any county may employ a competent civil engineer and road builder who shall be paid for his services not to exceed \$12 per day; who shall serve during the pleasure of said board, whose duty it shall be, under the direction and control of said board, to make all surveys, establish grades, prepare plans and specifications and estimates, supervise the construction and repair of all roads within the county; prescribe the time and place when and where all work shall be done on such road; report any delinquency or inefficiency of any road overseer or other person employed upon such roads to the board of county commissioners, and perform such other duties as may be prescribed by said board.

All contracts for work on state roads shall be let by the board of county commissioners of the county where such work is to be done.

Where the estimated cost of such work exceeds one thousand dollars (\$1,000) upon any road or part thereof, it shall be the duty of the county commissioners letting such contracts to give fourteen days' notice in one newspaper of general circulation in the county where the proposed road is located, or if located on the boundary line of two counties in one newspaper of general circulation of each of said counties calling for sealed bids upon such work, and if the lowest responsible bidder does not exceed the estimate of cost the contract may be let to such bidder. All of the bids may be rejected and new bids called for in the same manner, or the work may be done by day labor or convict or prison labor as may be deemed for the best interests of the general public.

The contractor shall at once after being awarded a contract for construction, improvement or maintenance work on a state road, and before entering upon the work thereunder, execute to the people of the state of Montana bond in a penal sum equal to one-half of the amount of such contract price, with approved securities conditioned upon the faithful discharge of his duties under such contract.

All payments made upon contract work upon state roads shall be made by the board of county commissioners of the county in which such road is located (except where the road is a county line between two counties, in which case each county shall pay its pro rata of the cost as fixed by the highway commission), upon estimates furnished by the engineer or superintendent in charge of such construction and approved by the highway commission, but at least twenty per cent of the amount of each estimate shall be withheld until the final completion and acceptance of the work,

and then paid with the final estimate. The said commission may from time to time, as work progresses under contracts on state roads, direct the state auditor to draw warrant in favor of the treasurer of the county in which such work is being done, and charge the same to the amount set aside for such county. [Approved March 13, 1913; Laws 1913, c. 78, p. 323.]

§ 1450. Annual Reports of County Commissioners—Duty Concerning Highway Fund.

(Section 11.) The board of county commissioners of each county in the state shall, on or before December 30th, of each year, make to the state highway commission two detailed reports of all moneys expended by such county for the current year in the construction, improvement and maintenance of roads in said county. One of said reports shall cover all items expended upon state roads under this act under the supervision and direction of the highway commission and the other report shall cover all moneys expended by the county for other roads in said county or upon the line thereof.

The said county commissioners shall also in such reports make recommendations as to the roads in said county which in their judgment should be improved or constructed the following year, under this act, and report all new discoveries of road material, giving location, character and extent or amount of same as nearly as possible.

The state highway commission shall, on or before January 15th of each year, certify to the state auditor the amount of the state highway fund which each of the counties is to receive for the current year under the provisions of this act, and the state auditor shall at once draw his warrant on said fund in favor of the county treasurer of each county for the amount due the several counties in the state, remaining to the credit of such county. [Approved March 13, 1913; Laws 1913, c. 78, p. 325.]

§ 1451. Biennial Report of Highway Commission.

(Section 12.) That the state highway commission shall on the first day of December preceding the biennial session of each legislature, make to the Governor a detailed report of the work of such commission for the time intervening between its prior report, and such suggestions and recommendations as to legislation as will, in the judgment of the commission, advance the interest of good roads in the state.

(Section 13.) All acts and parts of acts inconsistent with this act are hereby repealed.

(Section 14.) This act [§§ 1440-1451 herein] shall take effect from and after its passage and approval by the Governor. [Approved March 13, 1913; Laws 1913, c. 78, p. 326.]

§ 1452. Construction of Road—Use of Material from Neighboring Land.

The state board of land commissioners of the state of Montana is hereby authorized and directed, in its discretion, to permit any counties, or subdivisions thereof, road districts, or other persons desiring to construct public roads or highways, to remove and use, if desired, from the public lands owned, controlled, or held by the state, without payment or charge, all timber, stone, dirt, and gravel necessary for the construction or maintenance of any public highways within the state. [Approved March 5, 1915; Laws 1915, c. 66, p. 93.]

§ 1453. Good Roads Day.

The third Tuesday in June in each year is hereby designated "Good Roads Day" and the Governor shall annually, on or before the first day of June, by public proclamation, request the people of the state to contribute labor, material, or money toward the improvement of public highways in their respective communities upon that day. [In effect February 18, 1915; Laws 1915, c. 20, p. 29.]

§ 1454. Validation of Highway Elections and Bonds.

(Section 1.) When heretofore proceedings have been taken by the board of county commissioners of any county in this state ordering the submission to the electors of the question of issuing the bonds of the county for the construction of necessary highways and bridges within the county, and an election has been had on said question, such proceedings so taken, and such election so held, and any bonds of such county hereafter issued pursuant thereto and not in excess of the constitutional limit of indebtedness, are hereby legalized and declared to be valid.

(Section 2.) This act shall not apply to any actions now pending in which the validity of said proceedings, election or bonds is called in question. [Approved March 18, 1913; Laws 1913, c. 129, p. 481.]

§ 1456. [Repealed.]

By act approved March 10, 1915; Laws 1915, c. 141, p. 339.

§ 1473a. Public Ferries and Wharves—Establishment and Maintenance by Counties.

(Section 1.) When it shall be made to appear by petition to any board of county commissioners in this state that it is necessary to keep and maintain a public ferry across, or a wharf at any unfordable stream, lake, estuary, or bay, any county within the state, through its board of county commissioners, is hereby authorized to construct, or to acquire by condemnation or purchase, and to operate, maintain, direct, regulate and control the operation of a ferry across, or a wharf at, any unfordable stream, lake, estuary, or bay within, or bordering on said county, together with all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll.

(Section 2.) The board of county commissioners, in the exercise of the power herein bestowed, may acquire real property, as provided in the Code of Civil Procedure, Title VII, Part III, provided that no county ferry or wharf shall be established or maintained with a landing place in any incorporated town or city, which, by its charter, is vested with the power to build and regulate ferries, wharves or landings at the foot of streets terminating at a river or harbor.

(Section 3.) When public ferries, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain and operate any such ferry or ferries, provided that each county shall acquire its own landings and approaches, and maintain the same separately. Where ferrymen are employed on joint ferries, each county board shall receive a quarterly report from said ferryman, giving such information as the board of county commissioners of either county may require.

(Section 4.) The board of county commissioners may employ one or more ferrymen to operate free or toll ferries, and the board may lease any ferries or wharves to a company, firm, or individual, to be operated for the use of the public, and said company, firm, or individual shall give bond in an amount deemed sufficient by the board of county commissioners, and conditioned for the careful and businesslike operation of such ferry or wharf, in accordance with law and the regulations of said board.

(Section 5.) The board of county commissioners shall make all needful rules and regulations for the government and operation of county ferries, alter and fix rates of toll, and fix the amount of rental when leased to individuals or companies; and in all cases the rate of toll shall be printed in legible form and posted upon the boat and at the landing places. [Approved February 26, 1909; Laws 1909, c. 33, p. 37.]

Until the year 1909 express authority to establish free public ferries had never been given by the legislature. *Reid v. Lincoln County*, 46 Mont. 63, 125 Pac. 429.

Editorial Notes.

Establishment, regulation and protection of ferries. 59 L. R. A. 513.

HEALTH.

§ 1497. Expenses of Board of Health.

All necessary expenses incurred by any local board of health and the salary of each local health officer, shall be paid from the treasury of the respective city or town, on presentation of an itemized and verified account; and all expenses incurred by a county board of health in the enforcement of the provisions of this act, shall be paid from the general fund of the respective counties, on presentation of an itemized and verified account. The city or town shall be liable for all expenses incurred with reference to residents of such city or town, except paupers and the county shall be liable for all expenses incurred with reference to persons who are not residents of such city or town; provided, that persons who are merely sojourning in such city or town, or delayed by the authorities, or transients therein, or temporarily stopping therein without employment shall not be deemed residents of such city or town. The county shall be liable for all expenses necessarily incurred by any local board of health with respect to any person not a resident of the city or town, and the city shall be liable for all expenses necessarily incurred by any county board of health with reference to any person except paupers who is a resident of such city or town. No county, city or town shall escape any such liability for such expenses by transporting any person infected with, or known to have been exposed to, any communicable disease to any other county, city or town, or by persuading or inducing such person to go to such other city or town, or county. [Amendment approved March 8, 1909; Laws 1909, p. 164.]

§ 1500. Definition of Communicable Disease.

The term "communicable disease" as used in this act, shall be understood to include the following diseases: Smallpox, diphtheria, membranous croup, so-called scarlet fever, "spotted" or "tick" fever, typhus fever, enteric or typhoid fever, cerebro-spinal meningitis, measles, whooping cough, mumps, antero-polio myelitis or infantile paralysis, and tuberculosis and other diseases as the state board of health may hereafter designate. [Amendment approved February 13, 1913; Laws 1913, p. 15.]

§ 1509. Sewer System to be Approved by Board of Health.

Whenever any city, town, or corporation, or person shall hereafter contemplate the construction of any sewer system that will empty into any

stream or source of water supply in this state, they shall submit a plan of such proposed system to the state board of health and said board shall cause a thorough investigation to be made and if after such an investigation they shall determine that such sewerage will so pollute the waters of any stream or source of water supply as to endanger the health or lives of the citizens of this state, or any of them, they shall submit to the judge of the district court of the district in which such proposed sewerage system is located, the evidence on which their findings are based and if said judge upon that evidence, and such other evidence as the judge may receive on a hearing at which all parties in interest may be heard and present evidence if they desire, shall find that the action of the state board of health is just and unbiased, he shall issue an order preventing the construction of such sewerage system except under such conditions as the state board of health may designate.

A city or town may appeal to the district court of the county in which such city or town may be located from any order of the state board of health affecting such city or town at any time within thirty days after the service on the city or town council of such order. Such appeal may be taken by filing notice thereof in such court either before or after serving a copy of such notice on any member of the state board of health. The court may order pleadings to be filed to present the issues and such case shall be tried *de novo* the same as appeal from a justice court. [Amendment approved March 2, 1911; Laws 1911, p. 129.]

The prohibition of the statute relative to the protection of a public water supply, sections 1559-1572, is against the pollution of a stream at any place within the state; hence, an order of the state board of health, prohibiting a city from emptying sewage into a designated river, is not affected by the fact that the intake of the water supply of the next town, on the river, below the outfall of defendant's

sewer, is many miles away. *Miles City v. State Board of Health*, 39 Mont. 405, 411, 25 L. R. A. (N. S.), 589, 102 Pac. 696.

Editorial Notes.

Prescriptive right of municipality, or individual, to pollute stream with sewage or other harmful substance. 25 L. R. A. (N. S.) 589.

§ 1564. Pollution of Waters.

No sewerage, drainage, refuse or polluting matter, of such kind and amount as either, of itself or in connection with other matter, will corrupt, pollute or impair the quality of the water of any spring, pond, lake or stream used as a source of water or ice supply by a city, town or public institution or water or ice company for domestic use, or render it injurious to health, and no human excrement, shall be discharged into any such stream, spring, lake or pond or upon their banks or into any feeders of such spring, lake, pond or stream unless such sewerage, drainage, refuse or polluting water shall have been purified, so as to render it harmless in such a manner and under such conditions and restrictions as the state board of health may direct.

A city or town shall not be prohibited or enjoined from discharging its sewerage into a river or body of water unless such sewerage so pollutes the waters thereof as to be dangerous to public health. [Amendment approved March 2, 1911; Laws 1911, p. 130.]

Editorial Notes.

Protection from pollution of source of municipal water supply. 11 L. R. A. (N. S.) 1163.

§ 1566.

This section does not provide for a public trial, but contemplates an *ex parte*

investigation by the state board of health; it may, therefore, upon its information from any source and before it has heard any testimony, make a valid order prohibiting a city from polluting a stream which is a source of water supply for domestic uses. *Miles City v. State Board of Health*, 39 Mont. 405, 410, 25 L. R. A. (N. S.) 589, 102 Pac. 696.

§ 1573.

The practice of dentistry is a proper subject for police regulation. *Johnson v. City of Great Falls*, 38 Mont. 369, 374, 16 Ann. Cas. 974, 99 Pac. 1059.

Editorial Notes.

Power of state to prohibit practice of dentistry without license. 23 Am. St. Rep. 25.

DENTISTRY.

§ 1575. Board of Dental Examiners.

Said board shall have an official seal; said board shall at its annual meeting choose from its members a president, vice-president, secretary, and a judiciary committee; it shall meet at least once each year, and as much oftener, and at such times and places as may be necessary. The secretary and treasurer shall give such bonds as the board may designate. The president and secretary shall have the power to administer oaths; and said board shall have the power to hear testimony as to all matters relating to the duties imposed upon it by law. If any member of the board shall without cause, absent himself from two of its regular meetings, consecutively, his office shall be deemed vacant, and such vacancy shall be filled by appointment as hereinbefore provided. A majority of said board shall at all times constitute a quorum, and the proceedings thereof shall at all reasonable times be open to inspection. [In effect July 1, 1909; Laws 1909, p. 190.]

§ 1576. Dentists from Other States—Exchange Certificate.

Any dentist who has been in legal practice for five years or more, in any state in the United States, which has an exchange certificate law with that of Montana, and is a reputable dentist of good moral character and who is desirous of making a change of residence into another state, may apply to the examining board of the state in which he resides for a new certificate, which shall attest his moral character and professional attainments, and said certificate if granted, may be deposited with the examining board of the state of Montana, and said board in exchange therefor (may) grant him a license to practice dentistry in the said state of Montana. A fee of fifty dollars (\$50) will be charged for each exchange certificate and proceeds therefrom to be paid into the treasury of the state dental board of Montana. [In effect July 1, 1909; Laws 1909, p. 191.]

§ 1577. Examination of Applicants to Practice Dentistry.

Any person who desires to begin the practice of dentistry in the state of Montana after the passage of this act shall appear before said board of examiners at any of its regular or special meetings for examination. To be eligible for such examinations the applicant shall give satisfactory evidence of having practiced dentistry for five years, or shall present a diploma from a reputable dental college. The examination shall be conducted in English and shall be thorough, practical and sufficient to test the ability of the applicant to practice dentistry. It shall include: Operative and prosthetic dentistry, osteology, dental and general anatomy, histology, bacteriology, physiology, pathology, chemistry, metallurgy, materia medica, therapeutics, orthodontia and anesthetics. Demonstrations in operative and prosthetic dentistry, prognosis and diagnosis will be required. All applicants must

furnish their own material for demonstration. If the examinations prove satisfactory to said board of dental examiners, they shall issue a certificate of registration to the person examined. All certificates issued by the board, shall be signed by its president, secretary and a majority of the board present, and shall have its official seal attached thereto. [In effect July 1, 1909; Laws 1909, p. 191.]

§ 1580. [Repealed.]

By act approved March 9, 1909; Laws 1909, p. 192.

§ 1581. Who Regard as Practicing Dentistry.

All persons shall be held to be practicing dentistry, within the meaning of this act who shall receive a fee or salary, or other rewards, paid either to him or to another person for operations or parts of operations, of any kind, in the treatment of diseases or lesions of the human teeth or jaws, or in the correction of the malpositions thereof. But nothing in this article shall be construed to permit the performance of independent dental operations by unlicensed persons under the cover of the name of a registered practitioner or in his office. [In effect July 1, 1909; Laws 1909, p. 192.]

§ 1582. Examination Fee—Annual Dues of Dentist.

In order to provide means for carrying out and maintaining the provisions of this act, the board of dental examiners shall charge each person applying to or appearing before said board for examination, a fee of twenty-five dollars (\$25). In case the applicant fails to secure a certificate from said board, he may appear again before said board for another examination, and when the applicant has passed and certificate issued, an additional fee of twenty-five dollars (\$25) will be charged. Every registered dentist shall in each and every year pay to the board of dental examiners a fee of four dollars (\$4) as his annual dues, such payment to be made on or before the first day of May of each year. In case of default of such payment by any person, his or her certificate may be revoked by the board of dental examiners upon thirty days' notice from the secretary, to the person holding such certificate, unless within said thirty days said annual dues shall be paid, together with such penalties as the board may impose, and the board is expressly authorized to impose a penalty of one dollar (\$1) as a consideration for each year, for allowing the certificate to remain unrevoked. In case any registered dentist absenting himself from the state for a period of one or more years may be reinstated by the payment of a fee of (\$1) one dollar for each year absent. [In effect July 1, 1909; Laws 1909, p. 192.]

§ 1584. Violation of Law Regulating Dentistry.

Any person who shall violate any of the provisions of this act, or shall knowingly or falsely claim to have or hold a certificate of registration, license, diploma or degree granted by a society or board of dental examiners, or shall falsely, and with intent to deceive the public, claim or pretend to be the graduate of any incorporated reputable dental college, or shall have registered under one name and practiced dentistry under another name with intent to deceive the public, shall be deemed guilty of a misdemeanor, and upon conviction may be fined one thousand dollars (\$1,000),

and not less than five hundred dollars (\$500), or imprisonment for not less than six months nor more than one year, or may be punished by both such fine and imprisonment. All fines thus received shall be paid into the common school fund of the county in which such conviction takes place. [In effect July 1, 1909; Laws 1909, p. 193.]

§ 1585.

The provisions of the statutes relating to the practice of medicine and surgery do not comprehend the practice of osteopathy, as the practice of the latter is regulated by Revised Codes, sections 1594-1606. The classification of these two practices is a reasonable and proper classification. *State v. Dodd* (Mont.), 149 Pac. 481.

§ 1588.

Bond on appeal from order granting retail liquor license is not required. See note, post, § 7124.

The provisions of this section, concerning appeals, do not apply to an appeal from the action of a board of county commissioners, relative to an application for a retail liquor license in any place not within the corporate limits of a city or town. See note post, § 7124.

The practice of medicine is a proper subject for police regulation. *Johnson v. City of Great Falls*, 38 Mont. 369, 374, 99 Pac. 1059.

A physician's application, made to the district court, for a judicial determination of the validity of the action of the state board of medical examiners, in revoking his license for alleged unprofessional and dishonorable conduct, is a special proceeding, from the judgment in which an appeal lies to the supreme court, if taken within one year; but he cannot, after the time for appeal has elapsed, have the judgment reviewed and annulled on writ of review. *State v. District Court*, 39 Mont. 134, 136, 101 Pac. 961.

Editorial Notes.

Validity of statute authorizing revocation of license granted to physician or surgeon. *Ann. Cas.* 1912A, 634.

Constitutionality of statute requiring physicians and dentists to take out licenses as impairing vested rights of previous practitioners. *Ann. Cas.* 1914B, 399.

§ 1591.

The offense aimed at by this section is the practicing of medicine or surgery without a certificate, but if the pleader, in charging an offense under it, enters into unnecessary particularity, the evidence must support the specific charge made; otherwise, a conviction will be reversed. *State v. Morris*, 45 Mont. 334, 122 Pac. 917.

This section is not class legislation discriminating in favor of osteopaths, since they are excluded from the practice of medicine and surgery. The provision relating to osteopaths does not affect such practitioners. *State v. Dodd* (Mont.), 149 Pac. 481.

Editorial Notes.

Power of state to prohibit practicing of medicine without a license. 23 Am. St. Rep. 25.

Statutes regulating the practice of physicians and surgeons, to whom applicable. 98 Am. St. Rep. 742.

Constitutionality of statute requiring physicians and dentists to take out licenses as impairing vested rights of practitioners. *Ann. Cas.* 1914B, 399.

§ 1594.

The practice of osteopathy is a proper subject for police regulation. *Johnson v. City of Great Falls*, 38 Mont. 369, 374, 99 Pac. 1059.

§ 1605.

This section does not authorize osteopaths to practice medicine or surgery, but confines treatment to the use of the hands or mechanical appliances. *State v. Dodd* (Mont.), 149 Pac. 481.

§ 1607.

The practice of osteopathy is a proper subject for police regulation. *Johnson v. City of Great Falls*, 38 Mont. 369, 374, 99 Pac. 1059.

PHARMACY.

§ 1622. Vender of Drugs must be Registered Pharmacist.

(Section 1.) That it shall hereafter be unlawful for any person other than a registered pharmacist, as hereinafter defined, to retail, vend, compound or dispense drugs, medicines, poisons, chemicals or pharmaceutical preparations, in the state of Montana, or to institute, conduct or manage a store, shop, pharmacy or institution for the selling, vending, compounding, or dispensing of drugs, medicines, poisons, chemicals or pharmaceutical preparations in the state of Montana, unless, such be a registered phar-

macist as this act provided, or unless a registered pharmacist is placed in charge of such store, pharmacy, shop, or institution for the retailing, vending, compounding or dispensing of drugs, medicines, poisons, chemicals and pharmaceutical preparations. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

The practice of pharmacy is a proper City of Great Falls, 38 Mont. 369, 374, 99 subject for police regulation. Johnson v. Pac. 1059.

§ 1623. Registered Pharmacists Defined—Fee for Registration.

(Section 2.) Registered pharmacists, within the meaning of this act, shall comprise all persons who shall, at the time of the passing of this act, hold certificates of registration granted by the state board of pharmacy of the state of Montana, or persons who shall be granted certificates of registration by the said board of pharmacy after the passage of this act either by examination or reciprocity as hereinafter provided; fees for registration, under this act, shall be fifteen (\$15) dollars for an examination and twenty-five (\$25) dollars for reciprocity; said fees, thus collected, are to be paid to the state board of pharmacy of the state of Montana. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1624. Assistant Pharmacists.

(Section 3.) Assistant pharmacists, in the meaning of this act, shall comprise all persons over eighteen years of age, having had, at least one year's practical experience in the compounding and dispensing of physicians' prescriptions and, who shall pass such examination as the state board of pharmacy of the state of Montana shall require and pay to the state board of pharmacy a fee of five (\$5) dollars. Assistant pharmacists shall not be permitted, under this act, to institute, conduct or manage, on their own account or to assume the management for others of any pharmacy, store, shop or institution for the retailing, vending, compounding or dispensing of drugs, medicines, poisons, chemicals or pharmaceutical preparations, and, are to be governed by the rules of the state board of pharmacy of the state of Montana. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1625. State Board of Pharmacy—Appointment and Term of Office—Vacancies.

(Section 4.) Immediately upon the passage of this act, the Montana State Pharmaceutical Association shall submit to the Governor of the state of Montana the names of five registered pharmacists having had at least ten years' practical experience as dispensing pharmacists; provided, however, that nothing herein contained shall be so construed as to apply to or exclude registered pharmacists of less than ten years' practical experience who are graduates in pharmacy, and from this number the Governor shall appoint three, at least one of whom shall be a graduate in pharmacy, and the said three registered pharmacists shall constitute the state board of pharmacy of the state of Montana, to have and to hold office for one, two and three years respectively, as designated in their appointments, or until their successors have been duly appointed and qualified.

Annually thereafter the Montana State Pharmaceutical Association shall elect five registered pharmacists having ten years' practical experience as dispensing pharmacists; provided, however, that nothing herein contained

shall be so construed as to apply to or exclude registered pharmacists of less than ten years' experience who are graduates in pharmacy. And the Governor shall appoint one registered pharmacist from this number to fill vacancies annually occurring on the board. The term of office shall be three years or until his successor shall be appointed and qualified. In case of resignation or removal of any member of the said board, or a vacancy occurring from any cause, the Governor shall immediately appoint from the remaining selections of the Montana State Pharmaceutical Association a registered pharmacist to serve as a member of the board for the remainder of the unexpired term, provided, however, that the said board shall always contain at least one graduate in pharmacy. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1626. Organization of Board—Officers—Examination of Applicants.

(Section 5.) The said board of pharmacy shall, within thirty days after its appointment, meet in the city of Helena and organize by the selection of a president, secretary and treasurer, who shall serve for a term of one year and who shall perform the duties prescribed by the said board; said secretary, thus appointed, shall not be a member of the state board of pharmacy, but shall be a member of the Montana State Pharmaceutical Association in good standing and shall perform the duties as prescribed by the board. Meetings for the examination of applicants for registration, granting of certificates and such other business as is necessary, shall be held not to exceed twice in any one year, and at such times and places as may be fixed by the said board; provided, that thirty days' notice in writing to all applicants and to all registered pharmacists of the state of the time and place of each meeting at which there is to be a meeting for an examination of candidates for registration, shall be given. It shall be the duty of the board to receive all applications for examination and registration submitted in proper form, to grant certificates to such persons as may be entitled to the same under this act; to cause the prosecution of all persons violating any of the provisions of this act; to report annually to the Governor and to the State Pharmaceutical Association upon the condition of pharmacy in the state of Montana, which report shall also furnish a record of the proceedings of the board, as well as the names of all persons registered under this act; on what grounds and under what particular section of this act each person was registered, and any other facts pertaining to the granting of certificate including financial report.

The board shall have power to make by-laws for the full and proper execution of its duties under this act; to prescribe the forms and methods of application, examination and registration; to demand and receive from applicants the fees herein provided, which shall be held by the said board and applied to the payment of salaries and other necessary expenses incident to the full discharge of its duties. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1627. Salaries and Expenses of Officers.

(Section 6.) The salaries of the said board shall be five (\$5) dollars to each member for each day of actual service and all legitimate expenses incurred in the discharge of his official duties. The secretary of the board shall receive such salary as may be fixed by the said board which shall not exceed six hundred (\$600) dollars per annum and all of his legitimate

expenses incurred in the discharge of his official duties; he shall pay to the treasurer of the state board of pharmacy, at each regular meeting of the state board of pharmacy, or whenever the state board of pharmacy may direct, all funds which he or may come into his possession by virtue of his office as such secretary, and take the said treasurer's receipt therefor, and shall be paid out for such purposes only as the state board of pharmacy may direct, and only by warrant on said fund on an order drawn by the secretary and countersigned by the president of the state board of pharmacy; provided that no salaries or expense of the board shall be paid out of the state treasury. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1628. Application for Registration—Fees and Certificate.

(Section 7.) Every person seeking registration under this act, whose registration is not otherwise provided for, shall make application, in form and manner prescribed by the board, and deposit with the secretary of the board a fee of fifteen (\$15) dollars; then, on presenting himself at the time and place directed by the board, and sustaining a satisfactory examination, he shall be granted an appropriate certificate, setting forth his particular qualifications; provided, that in case of failure of an applicant to pass a satisfactory examination, he will be entitled to a second examination without charge, at the next succeeding meeting of the board. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1629. Annual Renewal of Registration—Fees.

(Section 8.) Every registered pharmacist and every assistant pharmacist, in the meaning of this act, who desires to continue in the pursuit of pharmacy in this state, shall annually, after the expiration of the first year of registration, and on or before the second day of July of each year, and after having been notified by the secretary of the state board of pharmacy, pay to the secretary of the state board of pharmacy a renewal fee of three (\$3) dollars, one (\$1) dollar of which shall be paid to the Montana State Pharmaceutical Association, in return for which a renewal of registration shall be issued. If a person neglect or fail to procure his annual registration as specified, notice of such failure having been mailed to his post-office address by the secretary of the state board of pharmacy, as obtained from the books of the secretary, he shall, after the expiration of thirty days, following the issue of the said notice, be deprived of all the privileges conferred by this act, and after six months he shall be deprived of his registration, and it shall be necessary for such person to make application and pass an examination as provided in section 7 of this act. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1630. Certificate—Contents and Display.

(Section 9.) Every person registered under this act shall receive from the state board of pharmacy an appropriate certificate not exceeding in size three hundred and twenty square inches, which shall be conspicuously displayed at all times in his place of business.

If the holder be entitled to manage or conduct a pharmacy in the state for himself or another the fact shall be set forth in the certificate. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1631. Violation of Act a Misdemeanor.

(Section 10.) Any person who is not a registered pharmacist, in the meaning of this act, who shall conduct, manage or keep, either for himself or others, a pharmacy, store, shop or institution for the retailing, dispensing, compounding or vending of drugs, medicines, poisons, chemicals or pharmaceutical preparations, and who shall not have in his employ a registered pharmacist, in the meaning of this act, shall be guilty of a misdemeanor and upon conviction, pay a fine of not less than twenty-five (\$25) dollars, nor more than two hundred and fifty (\$250) dollars. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1632. Wrongful Exhibition of Certificate of Registration.

(Section 11.) Any person who shall unlawfully and without authority under this act, take, use or exhibit the title of a registered pharmacist or an assistant pharmacist in the state of Montana, shall be liable to a fine of not less than fifty (\$50) dollars, nor more than two hundred and fifty (\$250) dollars, for each and every offense. A like penalty shall attach to any assistant pharmacist who shall, without authority, take, use or exhibit the title of registered pharmacist in the state of Montana. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1633. Compounding of Drugs by Person Other Than Registered Pharmacist—Sale of Patent Medicines.

(Section 12.) Any proprietor of a pharmacy, or any other person who shall permit the compounding or dispensing of physicians' prescriptions, or the vending of drugs, medicines, poisons, chemicals or pharmaceutical preparations in his store or place of business, except by a registered pharmacist, in the meaning of this act, or under the immediate supervision of a registered pharmacist, or who, while continuing in the pursuit of pharmacy in the state of Montana, shall fail or neglect to procure his annual registration, or any person who shall willfully make any false representations to procure for himself, or for another, registration under this act, or who shall violate any provisions of this act, shall, for each and every offense, be liable to a fine of not less than twenty-five (\$25) dollars nor more than two hundred and fifty (\$250) dollars. Provided that nothing in this act shall interfere with the keeping, distributing or handling of drugs, acids or poisons by merchants or corporations, for use in their business when kept in original and plainly labeled packages; provided, also, that nothing in this act shall interfere with any physician in his regular practice, nor with the wholesale business of any dealers, nor with the business of merchants in towns where there is no regularly licensed pharmacist when selling drugs, medicines, pharmaceutical or proprietary medicinal preparations in original and plainly labeled packages as the public may require, provided also that nothing herein shall be construed to prevent the sale of any patent or proprietary medicine in the original package, when plainly labeled, nor such non-medicinal articles as are usually sold by general merchants. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1633a. Drug-stores must Carry Official Preparations.

(Section 13.) Every person who shall keep a pharmacy, store, shop or institution for the compounding or dispensing of physicians' prescriptions, or for the sale of drugs, medicines, chemicals or pharmaceutical prepara-

tions, must carry the official preparations of the United States Pharmacopoeia and the National Formulary, and dispense the same.

The preparations carried in stock, made or dispensed by such person, where the same are covered by the United States Pharmacopoeia or the National Formulary, shall conform to the United States Pharmacopoeia and the National Formulary. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1633b. Registration of Pharmacist Without Examination—Reciprocity.

(Section 14.) Any pharmacist having had four years' practical experience as a dispensing druggist, upon the payment of a fee of twenty-five (\$25) dollars to the secretary of the state board of pharmacy, may be registered without examination under such rules as may be provided by the state board of pharmacy, provided further that such pharmacist be and is registered in some state whose standard of requirements of examination shall be fully equal to the standard of requirements of the state of Montana, and provided that such other state will also register pharmacists duly and regularly licensed in the state of Montana. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1633c. Repealing Clause.

(Section 15.) All laws and parts of laws, contrary to, or in conflict with this act are hereby repealed.

(Section 16.) This act [§§ 1622-1633c herein] shall take effect and be in force from and after the 1st day of July, 1915. [Amendment in effect July 1, 1915; Laws 1915, c. 134, p. 292.]

§ 1634.

See Pure Food and Drug Act, post, p. 1040.

§ 1636.

See Sale of Poisons post, p. 1049.

§ 1635. [Repealed.]

By act in effect July 1, 1915; Laws 1915, c. 134, p. 292.

§ 1637.

See License to Itinerant Venders, post, p. 441.

§ 1639. Appointment of Inspector of Boilers—Salary.

There must be appointed by the Governor, by and with the advice and consent of the Senate, one inspector of boilers, whose duty it is to inspect all steam boilers now in use in the state, not subject to inspection under the laws of the United States, and to examine and grant licenses to steam engineers intrusted with the care and management of steam boilers and steam machinery. The salary of the inspector of boilers is two thousand five hundred dollars per year, and his term of office is four years, unless sooner removed by the Governor. The inspector of boilers must execute an official bond in the sum of five thousand dollars. [Amendment approved February 24, 1913; Laws 1913, p. 32.]

§ 1640. Qualifications of Inspector.

No person is eligible to hold the office of inspector of boilers and steam engines who has not had at least ten (10) years of actual experience in the operation of steam engines, steam boilers and steam machinery, and who has not held for at least five years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana, or who is directly or indirectly interested in the manufacture or sale of boilers or

steam machinery or any patented article required to be sold relating thereto. [Amendment approved February 24, 1913; Laws 1913, p. 32.]

§ 1641. Assistants to Boiler Inspector.

There shall be three assistant inspectors of boilers, each of whom shall be called assistant inspector of boilers. Such assistant inspectors must be persons who have had at least five years' practical experience in the operation of steam engines and boilers and must have held a first-class stationary engineer's license within the state of Montana for at least one year immediately prior to appointment as assistant inspectors and must be persons of temperate habits and good character and qualified to perform the duties of their office. They shall be appointed by the Governor, by and with the advice and consent of the Senate, and be subject to removal at the will of the Governor. The salary of each assistant inspector shall be two thousand one hundred dollars per year. Each assistant inspector must execute an official bond in the sum of two thousand five hundred dollars.

There shall be a clerk to the state boiler inspector to be appointed by the Governor who shall also perform the duties of clerk to the state quartz mining inspector and the clerk of the state coal mine inspector. The salary of such clerk shall be one thousand five hundred (\$1,500) dollars per year, nine hundred (\$900) dollars of which shall be charged to the state boiler inspector's department; three hundred (\$300) dollars of which shall be charged to the state quartz mining inspector's department; and three hundred (\$300) dollars of which shall be charged to the state coal mine inspector's department, provided that when such clerk ceases to perform the duties as clerk to any one of the departments no part of such salary shall be charged to that department. Such clerk shall execute an official bond in the sum of two thousand dollars. [Amendment approved February 24, 1913; Laws 1913, p. 33. Prior amendment: Laws 1911, p. 13.]

§ 1642. Place of Office—Rules and Regulations.

The inspector of boilers must have his office at the seat of government, and must adopt rules as nearly uniform as possible for the inspection of steam boilers and prescribe the nature and extent of the examination of applicants for licenses and adopt such rules for the issuing thereof as are required by the provisions of this article, and must adopt such rules as he may deem necessary to carry into effect the provisions of this article. [Amendment approved February 24, 1913; Laws 1913, p. 33.]

§ 1643. Inspection of Boilers.

The inspector of boilers must inspect all steam boilers and steam generators before the same are used and all persons who bring into this state any boiler or boilers must notify the boiler inspector stating the number and kind of boilers, where the same had theretofore been located and where they are to be located and operated in this state, and must secure from the boiler inspector a certificate of inspection before said boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety (90) days after they are put in use, and all boilers must be inspected at least once in every year. Provided, that where a boiler has not been in use for more than sixty days during the year the inspector may, if he is satisfied that said boiler has been properly cared for and is in good condition, extend such certificate for an additional year without further inspection.

tion of such boiler, which extension shall be made without additional charge. Any person failing to give notice to the boiler inspector as herein provided, or who operates such boilers without a certificate from the boiler inspector shall be punished by a fine of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars for each offense, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment. The inspector of boilers must subject all boilers to hydrostatic pressure, which hydrostatic pressure must be thirty-three per cent greater than the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure, and the inspector must satisfy himself by and through interior and exterior examination that the boilers are well made and good and suitable material; and the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of the proper dimensions and free from obstructions; that the flues are circular in form; that the fire line of the furnace is at least two inches below prescribed minimum water line of the boilers; that the arrangement for delivering the feed water is such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life. [Amendment approved February 24, 1913; Laws 1913, p. 34.]

§ 1644. Further Requirements in Making Inspection.

The inspector must also satisfy himself that the safety valves are of suitable dimension, sufficient in number and area, and properly arranged, and that the safety valve weights are properly adjusted so as to allow no greater pressure in the boilers than the amount prescribed by the inspection certificate; that there are a sufficient number of gauge cocks properly inserted to indicate the amount of water, and suitable gauges that will correctly record the pressure of steam; and adequate and certain provisions for an ample supply of water to feed the boilers at all times, and that suitable means for blowing out are provided, so as to thoroughly remove mud and sediment from all parts of the boilers when they are under pressure or steam, and any renter, user or owner of a boiler or any person or persons who tamper with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate shall be deemed guilty of a misdemeanor.

In subjecting the boilers to the hydrostatic test, the test applied must exceed the working pressure allowed in the ratio of one hundred to sixty-six and two-thirds, provided the valves and other conditions of piping on the boiler will allow the inspector to make such test. But where there are leaks on the boiler which make it impossible to apply such hydrostatic pressure or where the water cannot be procured with which to make such test, the inspector may make a hammer test of said boiler and inspect same closely and give to such boiler a rating for steam pressure as its condition will warrant. In all cases the inspector must use judgment in the steam pressure allowed on boilers. Where a boiler is constructed with lap horizontal seams on boiler, dome or drum, a factor of four and one-half shall be used in determining the safe working pressure allowed on such boiler. But where the boilers are constructed with butt-strap horizontal seams, a factor of four may be used in determining such safe working pressure. But in any case the inspector may use a higher factor if the conditions are such

as to warrant it. If boiler rests on side wall on lugs, or is hung by eye-beams or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used to determine the safe working pressure allowed on boiler. Where the horizontal lap seams of boiler are exposed to the fire, a factor of five must be used to determine the safe working pressure to be allowed on such boiler. On stay bolts, if new, seven thousand five hundred pounds pressure per square inch shall be allowed. If such stay bolts are corroded or defective the inspector must determine the pressure to be allowed on same. On braces made of solid material, eight thousand pounds' pressure per square inch shall be allowed. On welded braces or braces with only one crowfoot, six thousand pounds' pressure per square inch shall be allowed. No cast iron shall be used in the construction or reinforcements of any boiler where the pressure allowed on said boiler is more than one hundred pounds per square inch. [Amendment approved February 24, 1913; Laws 1913, p. 35.]

§ 1647. Duty of Owner to Permit Inspection—Sealing of Fire-box—Costs and Expenses.

It is the duty of the owners or managers of steam boilers to allow the inspector free access to the same. In case the owner or manager of any boiler is notified by the inspector to have said boiler ready for inspection on a day certain and fails to have such boiler ready for inspection at such time, the inspector shall at once seal up the fire-box in such boiler and such seal must not be removed from the fire door without a written order from the inspector. Any person tampering with or removing said seal shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment. If the owner or manager of any boiler that has been so sealed desires to have the same inspected before the next regular visit of the inspector to the district where said boiler is situated, he must pay all transportation and hotel expenses of the inspector who makes the inspection, in addition to the inspection fee provided by law. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended. [Amendment approved February 24, 1913; Laws 1913, p. 36.]

§ 1648. Classification of Licenses—Who not Granted License.

No person must be granted a license to operate steam boilers or steam machinery under the provisions of this article who has not been examined by the inspector and found competent to perform the duties of an engineer and receive from such inspector a written or printed license so to act. Any person who operates any steam boiler or steam engine without first obtaining a license from the inspector or an assistant inspector is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days or by both such fine and imprisonment. [Amendment approved February 24, 1913; Laws 1913, p. 37.]

The trade of engineer is a proper subject for police regulation. *Johnson v. City of* Great Falls, 38 Mont. 369, 374, 99 Pac. 1059.

§ 1649. Classification of Engineers.

Engineers intrusted with the care and management of steam machinery as specified in section 1648 must be divided into three classes, namely, first-class engineers, second-class engineers, and third-class engineers. No license shall be granted to any person to perform the duties of first-class engineer who has not taken and subscribed an oath that he has had at least three years' experience in the operation of steam boilers and steam machinery, or whose knowledge and experience is not such as to justify the belief that he is competent to take charge of all classes of steam boilers and steam machinery. No license must be granted to any person to act as second-class engineer who has not taken and subscribed an oath that he has had at least two years of experience in the operation of steam boilers and steam engines and at an examination found competent to take charge of all classes of steam boilers and steam machinery not exceeding one hundred horse-power. No license must be granted to any person to act as a third-class engineer who has not served at least one year as fireman under a competent engineer and found upon examination to be sufficiently acquainted with the duties of an engineer to be intrusted with steam boilers and steam machinery not exceeding twenty horse-power. All firemen who have charge of steam boilers as to the regulation of feed water and fuel where the boilers are so situated as not at all times to be under the eye of an engineer in charge, are required to pass a third-class engineer's examination and procure the same kind of license. All applicants for license as stationary engineers or firemen must be at least eighteen years of age. None of the licenses in this section above named shall entitle the holder thereof to operate a traction engine, but all persons who are intrusted with the care and management of traction engines or boilers on wheels, other than locomotives, are required to pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a traction license. Such traction license shall not entitle the holder thereof to operate any other class of steam machinery specified in section 1648. No license shall be granted to any person to act as a traction engineer who has not had at least six months' experience as fireman on traction engines and who is not found upon examination to be sufficiently acquainted with the duties of traction engineer to be intrusted with the care of traction engines. Applicants for traction license must be at least eighteen years of age. [Amendment approved February 24, 1913; Laws 1913, p. 37.]

§ 1650. Complaints and Revocation of License.

Whenever complaint is made against an engineer holding a license from the inspector that he through negligence, want of skill, or inattention to duty, permitted his boiler to burn or otherwise become in bad condition, or that he has been found intoxicated while on duty, it is the duty of the inspector or assistant inspector to make a thorough investigation of the charge and upon satisfactory proof of such charge to revoke the license of such engineer. [Amendment approved February 24, 1913; Laws 1913, p. 38.]

§ 1651. Certificate of Inspection.

In making an inspection of the boilers and machinery herein provided for the inspectors may act jointly or separately but the inspector or assistant inspector making such inspection must in all cases certify the same

under the seal of the boiler inspector's office. Any inspector or assistant inspector who willfully and feloniously certifies regarding any steam boilers or their attachments or grants a license to any person to act as engineer contrary to the provisions of this article is punishable under the provisions of section 8446, of the Revised Codes. [Amendment approved February 24, 1913; Laws 1913, p. 39.]

§ 1652. Fees for Inspection or Examination.

The inspector or assistant inspectors are authorized to charge a fee of ten dollars for the inspection of each single boiler and its steam connections and five dollars for each additional boiler when connected. The fee for the inspection of each traction engine boiler on wheels shall be ten dollars. The fee for the inspection of boilers in incorporated cities shall be five dollars. Such fees shall be payable at the time of the inspection. In case of the failure of the owner or manager or person in charge of any boiler to pay such fee upon the demand of the inspector, said inspector is authorized to seal the fire-box of said boiler and such seal shall not be removed until said fee is paid and the written order of the inspector authorizing its removal is received by said owner or manager. Any person who tampers with or removes said seal without such written order shall be deemed guilty of a misdemeanor and punished as provided by section 1647. The fee for the examination of applicants for engineer's license is \$7.50 for first-class engineer; \$5 for second-class engineer; \$3 for third-class engineers; and \$3 for traction engineers; to be paid at the time of application for license. In case of the failure of any applicant to pass a successful examination, ninety days must elapse before he can again be examined as an applicant for a license. But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineers' licenses must be displayed in a conspicuous place in the engine-room. [Amendment approved February 24, 1913; Laws 1913, p. 39.]

§ 1655. Locomotives and Low Pressure Boilers Exempted.

This article does not apply to locomotives in Montana nor to cast-iron boilers, nor to boilers used for heating purposes in private residences, nor to any boiler having a capacity of five horse-power or less; nor are locomotive engineers or persons operating any of the engines or boilers herein exempted from the operation of this article required to procure license from the inspector or assistant inspectors of boilers. It shall be the duty of the owner or user of any traction engine or boiler on wheels, other than locomotives, to notify the inspector of the location of such boiler on or before the first day of June of each year. Any owner or user of such traction engine or boiler who shall fail to notify the inspector shall be deemed guilty of a misdemeanor. Any person purchasing any steam boiler, whether a traction or stationary boiler, shall be entitled to receive from the seller the certificates of inspection issued on such boiler, and any person purchasing any steam boiler, whether traction or stationary, not exempted by the provisions of this section, shall within ten days after such purchase report the fact of such purchase to the boiler inspector and notify such inspector where he intends to locate or operate said boiler. And any person failing to comply with this provision of this section shall be deemed guilty of a misdemeanor. [Amendment approved February 24, 1913; Laws 1913, p. 40.]

§ 1656. Annual Renewal of License—Annual Report of Inspector.

All certificates of license to engineers of all classes shall be renewed yearly. The fee for renewal is one dollar in all cases. Any engineer failing to renew his license as herein provided, or within at least thirty days thereafter, must forward the fee for the original license of the same grade, before license can be reissued. All moneys collected by virtue of the provisions of this article must be paid into the state treasury at least as often as once in each month. The inspector of boilers must make an annual report to the Governor on the tenth day of December of each year, setting forth the moneys collected by himself and assistant inspectors from any and all sources and the disbursements and the number of boilers inspected by them and the general results and experiences of his office together with such recommendations as to him may seem fit and proper. Said report must also refer to and account for the cause of any boiler explosion which may have occurred in the state during the year and the loss of life and property resulting therefrom. [Amendment approved February 24, 1913; Laws 1913, p. 40.]

§ 1657. Operation of Boiler Without License.

It is unlawful for any person in this state to operate a stationary boiler or steam engine or any boiler or steam engine other than railroad locomotives or other engines and boilers exempted by the provisions of section 1655, without a license granted under the provisions of this article. The owner, renter or user of any steam engine or boiler is equally liable for the violation of this action. But in case of accident, sickness, refusal to work or any unforeseen prevention of the licensed engineer employed by the owner, renter or user of a steam engine or boiler operated in remote districts which would retard the work to be performed, the owner, renter or user may, for the space of fifteen days employ any person of the age of eighteen years whom he may consider competent to run the engine or boiler, although such person so employed may not be the holder of an engineer's license. The person so employing the unlicensed engineer must immediately notify the inspector or assistant inspector. But no owner, renter or user of steam machinery shall be allowed to so employ unlicensed engineers for more than fifteen days in any one calendar year. And it shall be unlawful, except as stated in this section for any person, firm or corporation to employ any person not duly licensed as an engineer within the meaning of this act, to run or operate any of the boilers or engines subject to the provisions of this act. [Amendment approved February 24, 1913; Laws 1913, p. 41.]

§ 1658. [Repealed.]

By act approved February 24, 1913; Laws 1913, p. 42.

§ 1659. Sale of Second-hand Boilers.

Any person, firm or corporation who sells or offers to sell or who uses or attempts to use, or who rents to others for use or who delivers to others for use or who induces others to use any steam boiler that has theretofore been used, either within or without this state, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not longer than six months, or by both such fine and imprisonment. Pro-

vided that the provisions of this section shall not apply to boilers or engines exempted by the provisions of section 1655, nor does it apply to boilers which have been inspected within one year prior to the commission of the act complained of and on which a certificate of inspection has been issued and has not been revoked, nor does it apply to boilers on which a certificate of inspection has been extended as provided in section 1643 within the time limit of such extension. [Amendment approved February 24, 1913; Laws 1913, p. 41.]

HUMANE OFFICERS.

§ 1661. Bureau of Animal and Child Protection—Secretary.

The Governor of the state is hereby authorized and empowered to appoint a secretary at a salary of twenty-four hundred (\$2400) dollars per annum, payable monthly, who shall be chief of the bureau, whose duty it shall be to carry out the purposes of said bureau as hereby established. [Amendment approved February 26, 1909; Laws 1909, p. 40.]

§ 1664. Deputies for Bureau of Child and Animal Protection.

The secretary shall have the power to appoint six deputies, one of whom shall have his office in the city of Butte, one in Great Falls, one in Havre, one in Billings, one in Missoula and one in Kalispell. Such deputies shall take and subscribe the same oath required by the principal, and the same shall be of record in the secretary's office.

The deputies shall have the same power and authority as fixed by law in the principal, and shall have a salary of eighteen hundred (\$1800) dollars, per annum, payable monthly, out of the public treasury. They shall make full and complete reports every month to said principal showing all their official acts, with names of persons accused and against whom prosecutions may have been instituted, and the results thereof. Said deputies may be removed, at any time by the secretary, and another appointed to fill the vacancy. All deputies shall have authority to investigate cases reported to said bureau from any section of the state of Montana, when called or directed to so do by the secretary of said bureau. [Amendment approved March 8, 1911; Laws 1911, p. 350. Prior amendment: Laws 1909, p. 40.]

§ 1669a. Deputy Humane Officer—Powers, Duties and Compensation.

(Section 1.) The secretary of the State Bureau of Child and Animal Protection is hereby authorized and empowered to appoint a special deputy humane officer whose duties, powers and compensation are herein provided for, and to remove said special deputy from office at any time for cause, and to appoint another person to fill said vacancy.

(Section 2.) It shall be the duty of such officer to investigate into the welfare of all children who have heretofore been, or may hereafter be, adopted, or who have been placed in homes, from the Orphans' Home and other places, and to make written reports relative thereto to the secretary of the State Bureau of Child and Animal Protection at such times as may be by the secretary of the State Bureau of Child and Animal Protection required, and to make reports annually to the State Bureau of Child and Animal Protection, stating therein, in detail, the work and investigation performed by him.

(Section 3.) Said officer shall have like powers and authority as that now possessed by deputies in the State Bureau of Child and Animal Pro-

tection, and it shall be his duty to assist said bureau, when not otherwise employed; but nothing herein contained shall be construed to mean that said special deputy humane officer may not be allowed to first perform his special duties required by this act to the end that friendless, deserted or destitute and abandoned children who are adopted or who have been placed in homes, may after such adopting or placing in homes, be cared for in a humane and proper manner.

(Section 4.) That said special humane officer shall be paid the sum of eighteen hundred (\$1800) dollars per annum, payable monthly, together with his necessary traveling expenses, which said traveling expenses shall be audited and allowed as those of other state officers. [Approved March 15, 1913; Laws 1913, c. 102, p. 439.]

COAL MINING CODE.

§ 1679. Coal Mine Inspector—Appointment—Term of Office.

(Section 1.) This act [§§ 1679-1710q herein] shall be known as the Coal Mining Code of the state of Montana.

(Section 2.) The Governor, by and with the advice and consent of the Senate, shall appoint one state coal mine inspector qualified as herein-after provided, who shall hold office for a term of four years from the date of his appointment, unless otherwise removed by the Governor. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1679a. Deputy State Coal Inspector.

The Governor, by and with the advice and consent of the Senate, shall appoint one deputy state coal mine inspector. Said deputy state coal mine inspector shall be selected from among the list of names certified to by the county examining board for mine foreman, fire boss or mine examiner, as having successfully passed the examination of mine foreman and who has been granted a certificate of competency as such by a county examining board in Montana.

(Section 2.) He shall have like powers and duties as the state coal mine inspector, but be under the supervision and subject to the orders of and report to the state coal mine inspector, any and all acts pertaining to the inspection of mines, investigation of accidents, scales, wash-houses and any other duties as such deputy state coal mine inspector and shall reside in and perform the duties of deputy state coal mine inspector in the districts assigned him by the state coal mine inspector. The deputy state coal mine inspector shall receive a salary of twenty-one hundred (\$2100) dollars per year, and all necessary traveling expenses. He shall file with the state treasurer, a bond in the sum of five thousand (\$5,000) dollars, approved by the Governor for the faithful performance of his duties. [Approved March 21, 1913; Laws 1913, c. 134, p. 502.]

§ 1680. Qualifications of Inspector.

(Section 3.) No person shall be eligible to the office of state coal mine inspector until he shall have attained the age of thirty years. He shall be a citizen of the United States, a qualified resident of the state of Montana, shall have been actually employed at coal mining ten years prior to his appointment and shall possess a competent knowledge of all the different systems of coal mining and working and properly ventilating coal mines,

and the nature and constituent parts of noxious and explosive gases of coal mines, and of the various ways of expelling the same from the said mines. He shall have passed a successful examination by the board of examiners and his certificate of qualification shall have been filed with the Governor by the said board of examiners, as provided by law. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1681. Salary of Inspector.

(Section 4.) The salary of the state coal mine inspector shall be twenty-five hundred dollars per annum and all necessary and traveling expenses. The state coal mine inspector shall file with the state treasurer a bond, approved by the Governor of the state, in the sum of five thousand dollars (\$5,000), for the faithful performance of his duties. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1682. Powers and Duties of Inspector.

(Section 5.) The state coal mine inspector shall have the right, and it is hereby made his duty, to enter, inspect, and examine any coal mine or any shaft, drift or slope in the process of sinking for the purpose of mining coal in this state and the workings and the machinery belonging thereto, at all reasonable times, either by day or night, but not so as to impede or obstruct the workings of the mine, and when such inspection is contemplated he shall first notify the person in charge of his intention to make such examination. He shall also have the right and it is his duty to make inquiry into the condition of such mine, workings, machinery, scales, ventilation, drainage, method of lighting or using lights, and into all methods and things connected with or relating to, as well as to make suggestions providing for the health and safety of persons employed in or about the same, and especially to make inquiry whether or not the provisions of the laws providing for the regulation of coal mines, or other acts which may hereafter be enacted governing coal mines have been complied with. The owner, operator or superintendent of such mine is hereby required to furnish the means necessary for such entry, inspection, examination, inquiry and exit. It shall also be the duty of the said coal mine inspector to carefully examine all the coal mines in operation in this state at least every three months and oftener if necessary; to see that every precaution is taken to insure the safety of all the workmen that may be engaged in said coal mine. The said inspector shall make a record of the visit, noting the time and the material circumstances of the inspection. At the time of making his regular quarterly inspection, in the event of the inspector having in his possession any complaint in writing to the effect that the mining code is being violated, he shall notify the employees that he is about to make such inspection, and if the employees, in some proper manner, select one of their number to accompany the inspector on such inspection, he shall permit such employee to so accompany him. In the event of no such selection being made, the inspector may, if he so desire, request some employee to accompany him. The owner or operator shall at all times have the right to personally accompany the inspector while inspecting his property, or to designate some one to so accompany him. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1683. Inspector must not be Employed by Companies.

(Section 6.) The said state coal mine inspector while in office shall not act as agent for any corporation, superintendent or manager of any mines, and shall in no manner whatever be under the employ of mining companies, nor shall he be interested in any coal mining operations either as owner, lessee or otherwise. It shall be the duty of the said state coal mine inspector, on or before the first day of January of every year, to make a report to the Governor of his proceedings as such state coal mine inspector and the conditions of each and every coal mine in the state, stating therein all accidents that have happened in or about said mine or mines, and to set forth in said report all such suggestions as he may deem important as to any further legislation on the subject of coal mines. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1684. Instruments to be Furnished to Inspector.

(Section 7.) For the more efficient discharge of the duties herein imposed upon him, the said state coal mine inspector shall be furnished at the expense of the state with an anemometer, a safety lamp and whatever other instruments or other appliances may be necessary in order to carry into effect the provisions of the acts regulating coal mines. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1685. Inspector to Post Statement of Mine at Entrance.

(Section 8.) The state coal mine inspector shall post up in some conspicuous place at the top of each mine visited and inspected by him, a plain statement of the conditions of such mine, showing what in his judgment is necessary for the better protection of the lives and health of persons employed in such mine; such statement shall give the date of inspection and be signed by the said inspector. He shall also post a notice at the landing used by the men, stating what number of men may be permitted to ride on the cage, car or cars at one time, and at what rate of speed men may be hoisted and lowered on the cage, car or cars in accordance as hereinafter provided for in this act. He must observe especially that the code of signals provided in the act regulating coal mines between engineer and top men and bottom men, is conspicuously posted for the information of all employees. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1686. Temporary Vacancy in Office, How Filled.

(Section 9.) In case the state coal mine inspector becomes incapacitated and cannot perform the duties of his office for a longer period than two weeks, it shall be the duty of the Governor to depute some competent person having the qualifications provided in this act to fulfill the duties of the said inspector until the said inspector shall return to the performance of his official duties, and the person deputized by the Governor shall be paid by the state out of any moneys in the general fund of the state not otherwise appropriated, for the services rendered at the same rate as received by the state coal mine inspector.

In case of the death, resignation, or removal from office of the state coal mine inspector before the expiration of the term of office, the Governor shall appoint a duly qualified person as provided in this act, to fill the vacancy for the unexpired term. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1687. Inspector Ex-officio Sealer of Weights and Measures.

(Section 10.) The state coal mine inspector is hereby made, equally with the county clerk, ex-officio sealer of weights and measures, in so far as the same relates to coal mines and coal mining, and as such is empowered to test and compare all weights and measures used in weighing and measuring coal at any coal mine, or used in measuring air passages or other openings in coal mines, with the standards of weights and measures kept by the county clerk of any county. Upon the written request of any coal mine owner or operator or ten coal miners employed at any one mine, it shall be his duty to test and prove any scale or scales at such mine against which complaint is directed and if he shall find that they or any of them do not weigh correctly, he shall call the attention of the mine owner, lessor or operator to the fact and direct that said scale or scales be at once overhauled and readjusted so as to indicate only true and correct weights, and he shall forbid the further operation of such scale until such scales are adjusted. In the event that such test shall conflict with any test made by any county sealer of weights and measures, or under and by virtue of any municipal ordinance or regulation, then the test by such state coal mine inspector shall prevail. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1688. Standard Test Weights to be Furnished to Inspector.

(Section 11.) For the purpose of carrying out the provisions of this act, the state coal mine inspector shall be furnished by the state with such sets of standard weights suitable for testing the accuracy of track scales, and of all smaller scales at mines, as may in the judgment of the state coal mine inspector be necessary; said test weights shall remain in the custody of the state coal mine inspector for use at any point within the state, and for any amounts expended by him for the storage, transportation or the handling of the same, he shall be fully reimbursed upon making proper entry of the proper items in his expense voucher. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1689. Refusal of Mine Operator to Furnish Facilities for Examination.

(Section 12.) If any owner, lessor or operator shall refuse to permit such inspection or to furnish the necessary facilities for making such examination and inspection, the inspector shall file his affidavit setting forth his refusal, with the judge of the district court in said county in which said mine is situated, either in term time or vacation, and obtain an order on such owner, operator or agent so refusing as aforesaid, commanding him to permit and furnish such necessary facilities for the inspection of such coal mine, or to be adjudged to stand in contempt of court and punished accordingly. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1690. Investigation of Charges for Neglect of Duty.

(Section 13.) Whenever a petition signed by fifty or more reputable citizens, legal residents of the state, verified by oath by two or more of the said petitioners, and accompanied by a bond in the sum of five hundred dollars, running to the state, executed by two or more freeholders, approved and accepted by the clerk of the district court of the county or counties of their residence, conditioned for the payment of all costs and expenses

arising from the investigation of the charges is filed with the clerk of the district court setting forth that the state inspector of mines neglects his duties or is incompetent, or is guilty of malfeasance in office or misfeasance in office, it shall be the duty of the district court of the county to issue a citation in the name of the state to the said inspector, to appear, at not less than five days' notice, on a day fixed, before said court, and the court shall then proceed to inquire into and investigate the allegations of the petitioners; such action shall be prosecuted by the county attorney. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691. Penalties for Violation of Duty.

(Section 14.) If the court finds that the said state coal mine inspector is neglectful of his duties or incompetent to perform the duties of his office, or that he is guilty of malfeasance or misfeasance in office, the court shall certify the same to the Governor, who shall declare the office of said state coal mine inspector vacant, and proceed in compliance with the provisions of this act to fill the vacancy; and the costs of such investigation shall, if the charges are sustained, be imposed upon the said state coal mine inspector. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691a. Board of Examiners of Applicants for Coal Mine Inspector—Appointment.

(Section 15.) The Governor of the state shall within sixty days after the passage of and approval of this act, upon the recommendation of the coal miners of this state, appoint one practical coal miner actively employed in coal mining in the state of Montana, and one mine manager or superintendent, who shall be recommended to the Governor by the majority of the coal mine operators of the state of Montana, and one practical coal mining engineer; the three so named by the Governor shall constitute a board of examiners to pass upon the qualifications of applicants for state coal mine inspector of the state of Montana. They shall hold office for four years and until their successors, appointed in the same manner, are appointed and qualified. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691b. Scope of Examination.

(Section 16.) It shall be the duty of the said board to examine into the qualifications of all applicants for appointment to the position of state coal mine inspector of the state of Montana, by conducting a thorough examination as to their knowledge of mine workings, ventilation, gases, fire damp, machinery and actual experience in underground coal mining, and to acquaint themselves with the personal character, habits and general worthiness of each applicant. The general examination shall be in writing, and the manuscript and other papers of all applicants, together with the tally-sheets and the solution of each question as given by the examining board, shall be filed with the Secretary of the State as public documents, but such applicants shall undergo an oral examination pertaining to explosive gases and safety lamps. All candidates shall be allowed the use of such text-books as in the discretion of the board may be deemed proper, during the examination. The board of examiners shall confine the examination of applicants to subjects such as are designated in this section. No person shall be certified as competent whose average per cent shall be less than

seventy-five per centum and his certificate shall show what per cent the applicant has attained, and such certificate shall be valid only when signed by a majority number of the examining board. The examining board shall, immediately after the examination, furnish to each person who came before it to be examined a copy of all questions, whether oral or written, which were given at the examination, on printed slips of paper, which shall be marked solved right, imperfect or wrong as the case may be, together with a certificate of competency to each candidate who shall have made at least seventy-five per centum. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691c. Applications for Examinations—How Made.

(Section 17.) Applications to the said board for examination for state coal mine inspector must be made in writing and accompanied by an affidavit that the applicant is a citizen of the United States, a resident of the state of Montana, and that he has attained the age of thirty years; has had at least ten years' experience in underground coal mining in the United States and at least one year's experience in underground coal mining in the state of Montana. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691d. Selection by Governor.

(Section 18.) The board of examiners shall file with the Governor the names of all persons who shall have successfully passed the examination. From those so named the Governor shall select one person to be state coal mine inspector, provided that anyone who has served capably as state coal mine inspector for one full term, upon making written application to the board setting forth these facts, shall be certified to the Governor as properly qualified for appointment, but no man shall be eligible for the appointment as state coal mine inspector, who has any pecuniary interest in any coal mine, either directly or indirectly, as owner, lessee, or employer, or otherwise. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691e. Vacancy in Inspectorship—How Filled.

(Section 19.) As often as vacancies occur in the office of state coal mine inspector, caused either by death, resignation, removal for malfeasance or misfeasance as provided for in section 14 of this act or as otherwise determined as with other officers of the state, the Governor shall fill the same by appointment for the unexpired term by selecting a person whose name is on file in his office as provided for in section 18 of this act. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691f. Meetings of Examining Board—Oath of Office.

(Section 20.) The board of examiners appointed under this act shall each take the following oath of office before some person only [duly] authorized by law to administer an oath, We do solemnly swear or affirm that we will perform the duties devolving upon us to the best of our ability, and that in rejecting or recommending applicants for the position of state coal mine inspector for the state of Montana we will be governed by the evidence of qualification to fill the position under the law creating the same, and not by any consideration of political affiliation or personal favors; that we will

certify all whom we may find qualified, and who shall have passed the required examination, according to the act and none other, to the best of our knowledge and judgment. The board shall meet for the purpose of examining applicants for the position of state coal mine inspector on the second Monday in December, 1912, in the city of Helena, at the state capitol in the office of the state coal mine inspector, and on the second Monday in December every two years thereafter. The Secretary of State shall furnish whatever blanks, blank-books, printing or stationery the board may require in the discharge of its duties. Public notice of meetings of the board for the purpose of holding examinations shall be given by the board, by the posting of notices in the postoffice in the several coal mining towns throughout the state at least fifteen days previous to the date of the examination, and by publication in at least two daily papers published in the city of Helena, for ten consecutive days previous to the holding of the examination. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691g. Examination—Certificate of Fitness.

(Section 21.) The board shall then proceed to the examination of those who may present themselves as candidates for said office, and who shall have complied with the requirements necessary to entitle such applicant to be examined as provided for in section 17 of this act, and after a thorough examination as to knowledge and qualification of said applicants the said board of examiners shall certify to the Governor the names of all such applicants who have successfully passed the required examination for the position of state coal mine inspector as required under the provisions of the law. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691h. Compensation of Board of Examiners—Expenses.

(Section 22.) The board of examiners shall receive as compensation six dollars (\$6) per diem for the time not exceeding ten days actually engaged in the performance of the duties imposed upon them in this act and their actual expenses, such compensation to be paid out of the general fund in the manner provided by law. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691i. Appointment of Inspectors—How Made.

(Section 23.) The Governor shall, from the names certified to him by the said board of examiners, appoint a state coal mine inspector for the state of Montana, who shall hold office for the period of time as required by the law creating such office. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691j. Appointment of Examining Board.

(Section 24.) Every four years the Governor shall in the manner provided in section 15 appoint a board of examiners to pass upon the qualifications of applicants for coal mine inspector, which board shall be constituted, sworn and paid and shall perform the same duties as the board provided for in section fifteen (15) of this act, during the term for which they were appointed (and from the names certified to by them the Governor shall appoint a state coal mine inspector for the state of Montana). [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691k. Reappointment of Inspector not Prohibited.

(Section 25.) Nothing in this act [is to] be construed as preventing the reappointment by the Governor of any state coal mine inspector, who shall have successfully passed the required examination and qualified as hereinbefore provided for. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691l. Examining Board may Adopt Rules.

(Section 26.) Each successive board of examiners shall have the power to adopt their own rules and regulations for examinations as will best serve the purpose of this act; said rules not to conflict with the manner of examination as prescribed in section sixteen (16) of this act. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691m. Vacancies in Examining Board—How Filled.

(Section 27.) Vacancies upon the said board of examiners shall be filled by the Governor, in accordance with the intent and provisions of this act. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691n. Board for Examination of Applicants for Position of Mine Foreman, etc.

(Section 28.) On petition of the state coal mine inspector a judge of the district court of any county where coal is mined shall appoint an examining board of three persons, consisting of the state coal mine inspector, a miner and an operator or superintendent, to be known as the county examining board. The members of said examining board shall be citizens of the United States and legal residents of the state of Montana, and shall hold office for the term of two years or until their successors have been appointed and qualified. The persons so appointed shall, after being duly organized as a board, take and subscribe before an officer authorized to administer the same, the following oath, namely: We, the undersigned do solemnly swear or affirm that we will perform the duties of examiners of applicants for the position of mine foreman, mine examiner, or fire boss for the coal mines of Montana to the best of our abilities, and that in certifying or rejecting said applicants we will be governed by the evidence of the qualifications to fill the positions under the law creating the same, and not by any consideration of personal favors; that we will certify all whom we find qualified and none other. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691o. Scope of Examination.

(Section 29.) The examination shall consist of oral and written questions on theoretical and practical mining, on the nature and properties of noxious, poisonous and explosive gases found in the mines, and on the different systems of working and ventilating coal mines. During the progress of the examination the use of such text-books as the board shall approve shall be allowed applicants during the examination, and the board shall issue to those examined and found to possess requisite qualifications, certificates of competency for the position of mine foreman, mine examiner or fire boss; but such certificates shall be granted only to persons of twenty-three (23) years of age, or over, of good moral character, citizens of the United States, and residents of the state of Montana, and with at least five

years' practical experience in the working of coal mines. All papers and blanks, blank-books and stationery used at the examination, to be furnished by the board of county commissioners of the said county and each candidate for examination shall be given such questions, as are required, in writing and each question shall be on a separate paper.

Candidates must return such papers to the board, with answer to questions thereon, attested by his signature. All question papers and answers shall be filed in the office of the county clerk and recorder, in and for the county where examinations are held, and kept by him in some secure place, subject to examination at any time. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691p. Certificates as Mine Foreman.

(Section 30.) Certificates of qualifications to mine foremen in the coal mines of Montana, shall be granted by the board of examiners herein provided for, to each applicant who shall have passed a successful examination showing his knowledge of mine workings, ventilation, gases, fire-damp and his actual experience in underground coal mining. The certificates shall be in a manner and form as shall be prescribed by the state coal mine inspector, who shall keep a record in his department of all such certificates granted. Each certificate shall contain the full name and age and birthplace of applicant and also the length or nature of his previous service in coal mines. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691q. Qualifications for Mine Examiners.

(Section 31.) Persons seeking certificates of competency as mine examiners or fire boss must produce evidence satisfactory to the board that they are citizens of the United States, residents of the state of Montana, have had at least five (5) years' practical experience in working of coal mines, at least twenty-three (23) years of age, and of good repute and temperate habits. They must prepare to submit and satisfactorily pass an examination as to their experience in mines generating dangerous and explosive gases, their practical and technical knowledge of the nature and properties of fire-damp, the laws of ventilation, and the structure and use of the safety lamp. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691r. Examining Board Shall Grant Certificates.

(Section 32.) The said board of examiners shall meet at the call of the state coal mine inspector, who shall call them upon receipt of five requests for examination and shall grant certificates to all persons whose examination shall disclose their fitness for the duties of mine foreman as above classified, or mine examiner or fire boss and such certificate shall be sufficient evidence of the holder's competency for the duties of said position so far as relates to the purpose of this act; provided that any person who shall have been employed as mine foreman, continually for a period of one year preceding the approval of this act, by the same firm, person or corporation, shall be granted a certificate without undergoing such examination, but shall not be employed by any other person, firm or corporation without having successfully undergone such examination. No person shall be certified as competent whose average percentage shall be less than seventy-five (75) per centum on his entire examination, and such

certificates shall designate the position qualified for and shall be valid only when signed by a majority of the examining board. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691s. Certificates may be Issued to Those Holding Proper Certificates.

(Section 33.) The board may exercise its discretion, in issuing certificates of any class, without examination, to persons presenting with proper credentials certificates for the same or a similar position issued by competent authorities in this or other states; provided, however, that for every such certificate issued, the board shall charge a fee of five (\$5) dollars. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691t. Applications for Examination—How Made—Fees.

(Section 34.) An applicant for examination for any certificate herein provided for, before being examined, shall register his name with the state coal mine inspector at Helena, Montana, and file with him the credentials required by this act, to wit: An affidavit as to all matters of fact establishing his rights to and qualifications for receiving the examination, and a certificate of good character and temperate habits signed by at least ten (10) of the citizens who know him best in the place in which he lives. Each candidate, before receiving the examination, shall pay to the state coal mine inspector the sum of two (\$2) dollars as an examination fee, and those who pass the examination for which they are entered, before receiving their certificate, shall also pay to the state coal mine inspector the further sum of three dollars (\$3) each as a certificate fee. All such fees shall be duly accounted for by the state coal mine inspector and turned into the state treasurer at the close of the fiscal year. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691u. Compensation of Examining Board.

(Section 35.) The members of the examining board except the state coal mine inspector shall receive as a compensation the sum of five dollars (\$5) each day, for a term not exceeding two meetings of five days each in any year, and whatever sum is necessary to reimburse them for such traveling expenses as may be incurred in the discharge of their duties. All such salaries and expenses of the members of the board shall be paid upon vouchers duly sworn to by each member of the said board and approved and ordered by the state board of examiners, and the state auditor is hereby authorized to draw his warrants on the state treasurer for the amount thus shown to be due, payable out of any money in the state treasury not otherwise appropriated. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1691v. Violations.

(Section 36.) (a) Any person who acts in the capacity of mine foreman, mine examiner or fire boss without a certificate of competency as provided for in this act, shall be deemed guilty of an offense against this act, provided, however, the state coal mine inspector shall have the power to grant permits to persons to perform the duty of mine foreman, mine examiner or fire boss as provided for in this act, who may be employed by any company, corporation, association, person or persons engaged in the operating of any coal mines in the state of Montana until such time as the

person so employed has had an opportunity to be examined as to his competency by the board of examiners provided for in this act, but no longer.

(b) Every company, corporation, association, person or persons operating any coal mine or coal mines in the state of Montana, who employs any uncertified mine foreman, mine examiner or fire boss, except as provided for in section 33 of this act, shall be deemed guilty of an offense against this act, provided, however, that in cases of emergency any competent man may be employed to act as a temporary mine foreman, examiner or fire boss until a certificate or permit can be obtained, not to exceed a period of thirty (30) days, without violating this act or incurring any of its penalties. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1692. Necessary to Have Maps of Coal Mines.

(Section 37.) Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of such mine, drawn to a scale of not less than two hundred feet to one inch, and as much larger as practicable, on which shall appear the name of the state, county and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point and the scale to which the drawing is made. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1693. Underground Survey.

(Section 38.) For the underground working the said map shall show all shafts, slopes, tunnels or other openings to the surface or to the workings of a contiguous mine, all excavations, entries, rooms and crosscuts, the rise or dip of the seam from the bottom of the shaft, mouth of drift or slope in either direction to the face of the workings, the location of the fan or furnace, the location of the permanent pumps, hauling engines, engine planes and firewalls, the location of any standing water which might prove a menace to life or danger to property from flood, and the line of any contiguous surface outcrop of the seam. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1694. Map for Every Seam.

(Section 39.) A separate and similar map, drawn to the same scale in all cases, shall be made of each and every seam, which, after the passage of this act, shall be worked in any mine, and the maps of all such seams shall show all shafts, drifts, tunnels, incline planes or other passageways connecting the same. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1695. Map of the Surface.

(Section 40.) Every such map or plan, or at the option of the operator a separate map, shall show the surface boundary lines contiguous to the workings and pertaining to each mine, also all section or quarter-section lines and corners, town lots and streets, the tracks and side-tracks of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks and principal objects on the surface within the said boundary lines; and in all cases if of a separate surface map the same shall be drawn on transparent cloth or paper so that it can be laid upon the map of the

underground workings and thus truly indicate the relative location of the lines and objects on the surface to the excavations of the mine. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1696. Copies of Maps for State Coal Mine Inspector.

(Section 41.) The original or true copies of all such maps shall be kept in the office at the mine, and true copies thereof shall also be furnished the state coal mine inspector within thirty days after completion of the same. The maps so delivered to the inspector shall be the property of the state and shall remain in the custody of the said inspector during his term of office and be delivered by him to his successor in office. They shall be kept at the office of the inspector and be open to inspection by all persons interested in the same, but such examination shall only be made in the presence of the inspector and he shall not permit any copies of the same to be made without the written consent of the operator or owner of the property, under penalty of removal from office. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1697. Annual Surveys.

(Section 42.) An extension of the last preceding survey of every mine in active operation shall be made once in every twelve months, prior to July 1st of every year, and the result of said survey, with the date thereon, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine and all extensions of the workings to the most advanced face or boundary of said workings which have been made since the preceding survey. The said changes and extensions shall be entered upon the copies of the maps in the hands of the state coal mine inspector, or new copies thereof be furnished him, within thirty days after the last survey is made. Whenever the operator of any mine shall neglect or refuse, or for any cause not satisfactory to the state coal mine inspector fail, for a period of three months, to furnish to the said state coal mine inspector the map or plan of such mine, or a copy thereof or of the extension thereto, as provided for in this act, the said state coal mine inspector is hereby authorized to make or cause to be made an accurate map or plan of such mine at the expense of the owner or leaser thereof, and the cost of the same may be recovered by law from said owner, leaser or operator in the same manner as other debts by suit in the name of the state. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1698. Abandoned Mines.

(Section 43.) When any coal mine is worked out or is about to be abandoned or indefinitely closed the operator of the same shall make or cause to be made a final survey of all available parts of such mine, and the results of the same shall be duly extended on all maps of the mine and copies thereof, so as to show all excavations and the most advanced workings of the mine, and their exact relations to the boundary or section lines on the surface.

The state coal mine inspector may order a survey to be made of the workings of any mine which is about to be abandoned, or of which he has reason to believe the maps are inaccurate, whenever in his judgment the safety of the workmen, the support of the surface, the conservation of the

property or the safety of an adjoining mine requires it. Such survey shall be paid for by the state. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1699. Mine Operators to Furnish Wash-houses for Employees.

(Section 44.) It shall be the duty of the owner, operator or superintendent of any coal mine in the state of Montana, to provide a suitable building, not an engine or boiler house, for the use of the persons employed in such mine for the purpose of washing themselves and changing their clothes when entering the mine and returning therefrom. The said building shall not be over eight hundred feet from and convenient to the principal entrance of such mine when practical to do so. When not practicable to build the wash-house within the said distance and still conform to the other requirements of this section the state coal mine inspector may give written permission to place the building at a greater distance from the mine than that herein specified and the operator shall not be guilty of violation of this section. The said building shall be maintained in good order, be properly lighted and heated and supplied with pure cold and warm water, and be provided with facilities for persons to wash and a suitable locker for each person to be used by him as a repository for his clothes.

If any person shall maliciously injure or destroy or cause to be injured or destroyed, the said building or any part thereof, or any of the appliances or fittings used for supplying light, heat or water therein or doing any act tending to the injury or destruction thereof, he shall be deemed guilty of an offense against this act and subject to a fine as hereinafter provided for. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1700. Oath of Weighman—Check Weighman.

(Section 45.) The weighman employed at any mine shall subscribe to an oath or affirmation before some officer authorized to administer oaths, to do justice between employer and employee, and to truly and correctly weigh the output of coal from the mines as herein provided. The miners employed by or engaged in working for any mine owner, operator or lessee of any mine in this state shall have the privilege, if they desire, of employing at their own expense a check weighman, who shall have like equal rights, powers and privileges in the weighing of coal as the regular weighman and be subject to the same oath and penalties as the regular weighman. Said oath or affirmation shall be kept conspicuously posted in the weight office, and any weigher of coal or person so employed, who shall knowingly violate any of the provisions of this section, or any owner, operator or agent of any coal mine in this state who shall forbid or hinder miners employing or using a check weighman as herein provided, or who shall prevent or willfully obstruct any such check weighman in the discharge of his duty, shall be deemed guilty of an offense against this act. Whenever the state coal mine inspector, or his deputy, shall be satisfied that the provisions of this section have been willfully violated, it shall be his duty to forthwith inform the prosecuting attorney of any such violation, together with all the facts within his knowledge and the prosecuting attorney shall thereupon investigate the charges so preferred, and if he is satisfied that the provisions of this section have been violated, it shall

be his duty to prosecute the person or persons guilty thereof. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1701. Must not Use False Weights.

(Section 46.) Any person or persons having or using any scale or scales for the purpose of weighing the output of coal at mines must not arrange or construct them so that fraudulent weighing may be done thereby, and must not knowingly resort to or employ any means whatsoever by reason of which such coal is not correctly weighed and reported in accordance with the provisions of this act. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1702. General Equipment of Shafts.

(Section 47.) Every hoisting shaft must be equipped with safely constructed substantial cages fitted to guide-rails running from the top to the bottom of shaft. Said cages must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects and with sheet iron or steel casings on each side, not less than one-eighth inch in thickness, or wire netting of not less than one-eighth inch in diameter. They must be equipped with safety catches, said safety apparatus, whether consisting of eccentrics, springs or other devices, must be securely fastened to each cage and must be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. Every cage must be fitted with iron bars, chains or rings in proper place and sufficient in number to furnish a secure hand-hold for every person permitted to ride thereon. Gates not less than four feet high from the bottom of the cage shall be fitted to each cage and must be used during the regular hoisting or lowering of men; provided that when such cage is used for sinking only it need not be equipped with such doors as are hereinbefore provided for. At the top landing cage supports, when necessary, must be carefully set and adjusted so as to act automatically and securely hold the cage when at rest. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1703. Passageway Around the Bottom of Shafts.

(Section 48.) At the bottom of every shaft and at every caging place therein a safe and commodious passageway must be cut around such landing place to serve as a travelway by which men or animals may pass from one side of the shaft to the other without passing under or on the cage. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1704. Gates at the Top of Shafts.

(Section 49.) The upper and lower landings at the top of each shaft and the opening of each intermediate seam from or to the shaft, shall be kept free and clear from loose materials and shall be securely fenced with automatic or other gates, so as to prevent either men or materials from falling into the shaft. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1705. Two Places of Egress.

(Section 50.) For every coal mine in this state, whether worked by shaft, slope or drift, there shall be provided and maintained in addition to the hoisting shaft, slope or drift or other place of delivery a separate escape-

ment shaft, slope or drift or opening to the surface, or an underground communication passageway between every such mine and some other contiguous mine, such as shall constitute two distinct and available means of egress to all persons employed in such coal mine. The time allowed for completing such escapement shaft or drift or making such connections with an adjacent mine, as is required by the terms of this act, shall be three months for shafts, slopes or drifts two hundred feet or less in depth or length, six months for shafts, slopes or drifts less than five hundred feet in depth or length and more than two hundred, and twelve months for all other shafts, slopes or drifts or connections with adjacent mines. The time to date in all cases from hoisting of coal from main shaft, slope or drift. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1706. Unlawful to Employ More Than Ten Men.

(Section 51.) It shall be unlawful to employ at any one time more men than in the judgment of the state coal mine inspector is absolutely necessary for speedily completing the connections with the escapement shaft, slope or drift or adjacent mine and said number must not exceed ten men at any one time for any purpose in said mine until such escapement connection is completed. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1706a. Passageways to Escapement.

(Section 52.) Such escapement shaft or opening, or communication with an adjacent mine aforesaid, shall be constructed in connection with every seam of coal worked in such mine, and all passageways communicating with the escapement shaft or place of exit, from the main hauling ways to said place of exit, shall be maintained free of obstructions, at least five feet wide and five feet in height. Such passageways must be so graded and drained that it will be impossible for water to accumulate in any depression or dip of the same, in quantities sufficient to obstruct the free and safe passage of men. At all points where the passageway to the escapement shaft or other place of exit is intersected by other roadways or entries, conspicuous sign-boards shall be placed indicating the direction it is necessary to take in order to reach such place of exit. Where pillars are being drawn on an entry outside of where other men are working, or where more than fifty per cent of the coal is taken out in rooms, connections for escapement shall be made with some adjoining entry to provide a safe exit for the men. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1706b. Distance of Escapement from Main Shaft.

(Section 53.) The distance between the main shaft and escapement shall not be less than one hundred feet where steel headframes are used, nor less than three hundred feet where wooden headframes are used, provided, that where slopes or drifts are driven in or on the coal strata, the distance between the escapement road or travelway and the slope drift or hauling way shall not be less than fifty feet. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1706c. Buildings on Surface.

(Section 54.) It shall be unlawful to erect any inflammable structure or building in any space intervening between the main shaft, slope or drift

and the escapement shaft, slope or drift on the surface, or any powder magazine in such location or manner as to jeopardize the free and safe exit of the men from the mine by said escapement shaft, slope or drift in case of fire in the main shaft, slope or drift buildings. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1706d. Stairway or Cages in Escapement Shaft.

(Section 55.) The escapement shaft at every mine which does not exceed one hundred feet in vertical depth shall be equipped with safe and ready means for the prompt removal of men from the mine in time of danger, and such means shall be a substantial stairway which shall be provided with handrails and with platforms or landings not more than ten feet apart. Where the escapement exceeds one hundred feet in vertical depth, in place of the stairway, it may be equipped with a cage for hoisting men, and such cage must be suspended between guides and be so constructed that falling objects cannot strike persons being hoisted upon it. Such cage must be operated by steam or electricity which power shall be kept available for immediate use at all times and equipment of said hoisting apparatus shall include a depth indicator, a brake on the drum, a steel or iron cable and safety catches on the cage; and all such hoisting machinery must be inspected at least once each week by some competent person representing the operating company or owner. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1706e. Obstructions in Escapement Shaft.

(Section 56.) No accumulation of ice or obstruction of any kind shall be permitted in any escapement shaft, nor shall any steam be discharged into said shaft; and all surface or other water which flows therein shall be conducted by rings or otherwise, to receptacles for same so as to keep the stairway or cage free from falling water. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1706f. Weekly Inspection of Escapements.

(Section 57.) All escapement shafts and passageways leading thereto or to the works of a contiguous mine must be carefully examined at least once each week by the mine foreman or by a man specially delegated by him for that purpose, and the date and findings of such inspection must be entered in a record book in the office at the mine. If obstructions are found their location and nature must be stated together with the date on which they were removed. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1706g. Communication With Adjacent Mines.

(Section 58.) When operators of adjacent mines have by agreement established underground communication between said mines as an escape-outlet for the men employed in both mines, the roadways to the boundary on either side shall be regularly patrolled once each week and kept clear of all obstructions to travel by respective operators, and the intervening door shall remain unlocked and ready at all times for immediate use. When such communication has once been established between adjacent mines, it shall be unlawful for the operator of either mine to close the same without the consent of the contiguous operator and the state coal mine inspector; provided, that when either operator desires to aban-

don mining operations the expense and duty of maintaining such communications shall devolve upon the party continuing operations and using the same. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1707. Ventilation of Mines.

(Section 59.) The owner, operator or superintendent of every coal mine, whether operated by shaft, slope or drift, shall provide and hereafter maintain ample means of ventilation for the circulation of air through the main entries, cross-entries and all other working places, to an extent that will dilute, carry off and render harmless the noxious or dangerous gases generated in the mine, affording not less than one hundred cubic feet per minute for each and every person employed therein, and not less than six hundred cubic feet per minute for each and every animal in the mine; but in any mine, or section of a mine, where fire-damp is generated not less than one hundred and fifty cubic feet of air per minute shall be provided for each person or as much more as may be necessary to keep such section free from fire-damp. The quantities of air in circulation shall be ascertained with an anemometer or other efficient instrument; such measurement shall be made by the foreman or his assistants once a week at the inlet and outlet airways, and also at or near the face of each entry, and shall be recorded in a book kept for that purpose at the mine office. The quantity of air as provided for in this act for each person shall be conducted to each working place.

In rooms generating fire-damp the volume of air required by this act shall be conducted to the face thereof by the use of brattice cloth or other suitable means. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1707a. Pressure Gauges.

(Section 60.) At each mine generating fire-damp so as to be detected by a safety lamp a water-gauge for the purpose of recording the pressure or vacuum of the main air current shall be provided and maintained which shall be kept in constant use and records preserved subject to the inspection of the state coal mine inspector or his authorized representative. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1707b. Number of Persons Permitted to Work in Same Air Current.

(Section 61.) The current of air in mines must be split or subdivided so as to give a separate current to a number not exceeding one hundred men at work, and the inspector has the discretion to order a separate current for a smaller number of men if special conditions render it necessary. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1707c. Crosscuts and Brattices for Ventilation.

(Section 62.) Crosscuts between the entries, except where same are within the confines of shaft bottom pillars, shall be made not exceeding sixty feet apart, unless sufficient brattice is used to keep the air current up to the entry face in which case they shall not exceed one hundred feet apart. When there is a solid block on one side of the room, crosscuts shall be made between such room and the adjacent room not to exceed sixty feet apart; where there is a breast or group of rooms, a crosscut shall be made on one side or the other of each room, except the room adjoining said block not to exceed fifty feet from the outside corner of the crosscut

to the nearest corner of the entrance of the room and on the opposite side of the same room a crosscut shall be made not to exceed ninety feet from the outside corner of the crosscut to the nearest corner of the entrance of the room, and thereafter crosscuts shall be made not to exceed eighty feet apart on each side of the room. The required air current shall be conducted to the crosscut nearest the face of each entry or room.

Brattices between permanent inlet and outlet airways shall hereafter be constructed in a substantial manner of brick, blocks, masonry, concrete or nonperishable material. Rooms must not be worked in advance of the ventilating current. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1707d. Operation of Ventilating Fans, Furnaces, etc.

(Section 63.) All ventilating fans, furnaces and any means in use to ventilate mines shall be kept in constant operation, day and night, in mines generating fire-damp or where two shifts are being worked. Where no fire-damp is generated, or only one shift is worked, the fan, furnace or other means of ventilation shall be started and kept running not less than two hours before the time to begin work. Should it at any time become necessary to stop the fan or other means of ventilation on account of accident or needed repairs to any part of the machinery, furnace or other means of ventilation connected therewith, or by reason of any unavoidable cause, it shall then be the duty of the mine foreman, or any official in charge, after first having provided as far as possible for the safety of the persons employed in the mine, to order said fan or other means of ventilation to be stopped so as to make the necessary repairs or to remove any other difficulty that may have been the cause of such stoppage. All ventilating furnaces in mines shall, for two hours before the appointed time to begin work and during working hours, be properly attended by a person employed for the purpose. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1707e. Overcasts, Air Bridges and Doors—How to be Constructed.

(Section 64.) In all mines, all main air bridges or overcasts built after the passage of this act shall be constructed of masonry or other incombustible material of ample strength, or be driven through the solid strata. In all mines the doors used in guiding and directing ventilation of the mine shall be so hung and adjusted that they will close themselves, or can be supplied with springs or pulleys so that they cannot be left standing open, and an attendant shall be employed at all principal doors through which cars are hauled, for the purpose of opening and closing said doors when trips of cars are passing to and from workings, unless an approved self-acting door is used. Necessary room shall be provided at each door so as to protect said attendant from being run over by the cars while attending to his duties, and persons employed for this purpose shall at all times remain at their post of duty during working hours. On every inclined plane, or where haulage is done by machinery, and where a door is used, an extra door shall be provided to use in case of necessity. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1707f. Underground Stables.

(Section 65.) Where livestock is kept underground the stables or stalls shall be separated from the main aircourse by not less than twenty

feet of solid strata or a solid wall of brick masonry or concrete, not less than twelve inches in thickness. The construction of the stable shall, as far as possible, be free from all combustible material. No hay or straw shall be taken into the mine unless same be compressed into compact bales, and only from time to time in such quantities as will be required for two days' use. No greater quantity of hay or straw shall be stored in the mine or stable and when such is taken inside the mine it shall be taken to the stable at once and placed in a separate room provided therein for the same. The stable must be so placed that the air ventilating the same is returned immediately to the main outlet aircourse and not allowed to go further into the mine to where men are working. The connections between the air-courses and the stables must be fitted with substantial doors, placed so that they can be readily reached in the event of fire in the stable. Where conditions prohibit the use of entirely incombustible material in the construction of the stable the doors leading to or from the same shall be made of iron or steel plate, not less than one-quarter inch in thickness, set in masonry or concrete walls. The lights used in the stable shall be incandescent lamps placed so that same will not be injured by the stock or the persons required to enter the stable, or lanterns of railroad type suitable for using lard or signal oil, and only such oil shall be used therein. All refuse and waste shall be promptly removed from the stable in the mine and shall not be allowed to accumulate.

Stables constructed underground after the passage of this act shall be located not nearer than one hundred and fifty feet to any opening to the mine used as a means of ingress or egress. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1707g. Precautions When Approaching Abandoned Workings.

(Section 66.) Whenever any working place of a mine approaches within one hundred feet of the abandoned workings of another mine as indicated by an accurate survey, or while driving any working place parallel with the workings of such abandoned mine within one hundred feet thereof, and such abandoned mine cannot be explored or when same contains fire-damp or water which may inundate such working place, the mine foreman shall not permit such working place to be advanced until a drill hole has been extended not less than twelve feet in the center of such working place and a flank hole not less than twelve feet extended on each rib, starting at the working face after taking out each cut of breaking.

Whenever the limits of an abandoned mine are not known by actual survey the above rule shall apply whenever any working place approaches within two hundred feet of the supposed limits of such abandoned mine. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1708. Timber and Supplies.

(Section 67.) The operator of any mine shall keep an adequate supply of suitable timber constantly on hand, and deliver to the working place of each miner the props of approximate length, caps and other timbers necessary to securely prop the roof thereof. Such props, caps and other timbers shall be delivered in mine cars at the point where the miner receives his empty cars or unloaded at the entrance of the room. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1708a. Hauling Roads.

(Section 68.) On all hauling roads or entries on which the hauling is done by machinery, where men have to pass to or from their work, and on all entries on which the hauling is done by draft animals, there shall be a clearance on one side of at least two and one-half feet between the car and the rib of such entry. This place shall be kept free from all obstructions and no material shall be placed thereon. In mines already opened prior to the passage of this act where such clearance does not exist, or in mines where mining conditions prohibit the driving of entries wide enough to give such clearance, places of refuge must be cut in the side wall at least three feet wide, two and one-half feet deep, five feet high and not more than twenty yards apart, but such places of refuge shall not be required in entries from which rooms have been driven at regular intervals not exceeding twenty yards. All such places of refuge must be kept clear of obstructions and no material shall be stored nor allowed to accumulate therein. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1708b. Airways.

(Section 69.) It shall be the duty of the owner, lessee or operator of every coal mine to provide and maintain airways of sufficient dimensions and in no case shall the area of the aircourses be less than twenty-five feet in mines operated on the room and pillar system. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1708c. Drainage, Traveling-ways.

(Section 70.) Standing or stagnant water shall not be allowed to remain in traveling-ways, nor shall the intake airways be used by miners or other persons as a depository for excrement or any other refuse. Obstructions of any kind must not be placed in crosscuts, rooms or entries used as main airways. Where necessary to provide a traveling-way other than the main entries, slope or drift in any mine for men going to or returning from their work, the same shall be kept clear from debris or obstructions of any kind, and all loose coal, slate and rock overhead or in rib in traveling-ways, where miners have to travel to or from their work, must be taken down or carefully secured. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1708d. Examination by Foreman.

(Section 71.) All main airways or traveling-ways in any underground workings shall be examined at least twice a week by the mine foreman or some other competent person so directed by said mine foreman and a record of such inspections shall be kept at the mine office. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1708e. Removal of Combustible Matter.

(Section 72.) It shall be the duty of the mine foreman or his assistant in charge of any coal mine where coal-dust or any other inflammable material may accumulate to cause the same to be properly saturated with water or with some compounds or chemicals used for such purpose as often as necessary in either aircourses or entries, or all accumulated matter, explosive in its nature, shall be removed from the mine. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1708f. Mine Foreman and His Duties.

(Section 73.) In order to secure efficiency in the coal mines the operator or superintendent shall employ a competent and practical foreman; said mine foreman shall have passed an examination and obtained a certificate of competency as required by this act, and said mine foreman shall devote the whole of his time to his duties at the mine when in operation.

The mine foreman or his assistant shall visit and examine every working place in the mine at least each alternate day while the miners of such places are or should be at work and shall examine and see that each working place is secured by timbering so that the safety of the mine is assured; he shall see that a sufficient supply of timbers and material is always on hand at the working places in compliance with this act.

When the mine foreman is personally unable to carry out the requirements of this act as pertaining to his duties, on account of sickness or of other unavoidable conditions, a competent person shall be appointed to act in his place. The said person so appointed shall possess a certificate of competency, either as mine foreman or mine examiner as provided for in this act, or shall receive a permit to act as such from the state coal mine inspector's office within thirty days after taking charge.

Whenever such mine foreman, his assistant or assistants, shall have an unsafe place reported to him or them, he or they shall order and direct that the same be placed in a safe condition and until such is done no person or persons shall enter such unsafe place except for the purpose of making it safe. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1708g. Mine Examiners and Their Duties.

(Section 74.) A mine examiner shall be required at all coal mines generating dangerous and explosive gases.

His duty shall be to visit the mine before the men are permitted to enter it and, first, he shall see that the air current is traveling in its proper course and quantity. He shall inspect all places where men are expected to pass or to work and observe if there are any recent falls or obstructions in rooms and roadways or accumulations of fire-damp or other unsafe conditions.

He shall especially examine the edges and accessible parts of recent falls and old gobs and aircourses. As evidence of such examination he shall mark with chalk upon the face of the coal his initial and the date of the month and year; if there is any standing gas discovered he shall leave a danger signal across every entrance to such place.

He shall make a report on a blackboard provided on the outside of the mine, or at some other convenient place, for that purpose and arranged so that the men can inspect it while passing to their work, showing the conditions of the mine as to the presence of fire-damp, and indicating the place or places where present if any is present, before he permits any person or persons to enter the mine. He shall complete his inspection before the time for the day shift men to go to work and shall personally check each miner or loader into the mine, advising each as to the condition of his working place and holding back any man whose working place is in dangerous condition. He shall return to the mine with such miners or loaders thus held back and remain there attending to the removal of any standing gas.

He shall examine parts of the mine not in actual course of working and available, not less than once each three days. He shall see that every

part of the mine is kept free from standing gas and all old workings are properly fenced off. He shall examine the mine on idle days and Sundays if any men are required to work in any part of it, and, if any time elapse between the day turn leaving and night turn starting, the places to be worked by night turn must be examined by him with a safety lamp and reported safe before persons go to them. He shall make a daily record of the conditions of the mine as he has found them, in a book kept for that purpose, which shall be preserved in the office of the company. No miner or loader, when advised by the mine examiner that his working place is dangerous, shall leave the bottom of the shaft or the main partings on slopes or drifts until accompanied by the mine examiner. [Amendment approved March 7, 1911, Laws 1911, c. 120, p. 261.]

§ 1708h. Safety Lamps.

(Section 75.) At any mine where fire-damp or other explosive gases are being generated so as to require the use of safety lamps in any part thereof the operator of such mine, upon receiving notice from the state coal mine inspector or the mine examiner that one or more lamps are necessary to the safety of the men in such mine, shall at once procure and keep for use such number of the most improved safety lamps as may be necessary. All safety lamps used for working therein shall be the property of the operator and shall remain in the custody of the mine foreman or other competent person, who shall clean, trim and fill, examine and deliver the same, locked and in safe condition, to the men when entering the mine, and shall receive the same from the men at the end of their shift. Persons using such lamps shall be responsible for the condition and proper use of safety lamps while in their possession. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1708i. Only Safety Lamps to be Used.

(Section 76.) In every working approaching any place where there is likely to be an accumulation of explosive gases, or in any working where danger is imminent from explosive gases, no light or fire other than a locked safety lamp shall be allowed or used. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1708j. Keys for Safety Lamps.

(Section 77.) No one except a duly authorized person shall have in his possession a key or other contrivance for the purpose of unlocking any safety lamp in any mine where locked safety lamps are used. No lucifer matches or any other apparatus for striking light shall be taken into said mine or parts thereof. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1709. Firing of Blasts Where Safety Lamps are Used.

(Section 78.) In any mine where locked safety lamps are used no blast shall be fired in such portion of the mine except by permission of the mine foreman or his assistants, and before a blast is fired the person in charge must examine the place and adjoining places and satisfy himself that it is safe to fire such blast before such permission is given. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1709a. Storing of Explosives in Mines.

(Section 79.) No workman shall have at any time more than one twenty-five pound keg of black powder in the mine nor more than five pounds of high explosives. Every person who has powder or other explosives in a mine shall keep it or them in a wooden or metallic box or boxes, securely locked, and said boxes shall be kept at least five feet from the track and no two powder boxes shall be kept within twenty-five feet of each other nor shall black powder and high explosives be kept in the same box. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1709b. Manner of Handling Explosives.

(Section 80.) Whenever a workman is about to open a box or keg containing powder or other explosives and while handling the same he shall place and keep his lamp at least five feet distance from such explosive, and in such position that the air current cannot carry sparks to it, and no person shall approach nearer than five feet to any open box containing powder or other explosives with a lighted lamp, lighted pipe or other thing containing fire. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1709c. Copper Tools.

(Section 81.) In the process of charging and tamping a hole, no person shall use an iron or steel pointed needle. The needle used in preparing a blast shall be made of copper and the tamping bar shall be tipped with at least five inches of copper. Some soft material must always be placed next the cartridge or explosive. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1709d. System of Blasting.

(Section 82.) A workman who is about to explode a blast with a squib shall not shorten the match, saturate it with oil, or ignite it except at the extreme end; he shall see that all persons are out of danger from probable effects of such shots, and shall take measures to prevent anyone from approaching by shouting "Fire" immediately before lighting the fuse or squib.

When firing shots in close proximity to other workmen on rib or in cross-cut driven for air or other purposes, he or they, firing such shots, shall notify in person or by signals the workmen in adjoining rooms or other place of entry.

When a squib is used and a shot misses fire no person shall return until five minutes shall have elapsed. When a fuse is used and a shot misses fire no person shall return until one hour for each foot of fuse shall have elapsed. When it is necessary to tamp dynamite, nothing but a wooden tamper shall be used.

No hole shall be drilled to a greater depth than the cut or shearing, neither shall fine coal, coal-dust or any combustible material be used for tamping any hole.

No workman shall put off any blast in any mine known as a "following shot."

At all coal mines the firing of shots shall be restricted to a specific time at the end of each shift, except that in entries, slants and doom necks, when necessary, one snubbing shot may be fired in each at the middle of the shift. No miner shall fire a shot until the time appointed for him to do so and then only in such rotation as designated by the proper authority. After

each blast he shall exercise great care in examining the roof and coal and shall secure them safely before beginning to load coal. Where shooting is done by shift work the same precaution shall be used by some person or persons designated by the operator.

When draw-slate is over the coal the miner shall not go underneath the draw-slate until it is made safe from falling by securely posting it, and he shall not remove the posts until the coal is removed and he is ready to take down the draw-slate. He shall not place in the gob or refuse pile any fine coal or coal-dust but shall load same into cars. When more than one shot is to be fired at the same time with fuse, in the same working place, different lengths of fuse shall be used so as to prevent any possibility of the shots going off simultaneously. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1709e. Care of Working Places.

(Section 83.) Each miner shall examine his working place upon entering the same and shall not commence to mine or load until it is made safe. He shall be very careful to keep his working place in safe condition at all time.

Should he at any time find his place becoming dangerous from any cause or condition, to such an extent that he is unable to take care of the same personally, he shall at once cease work and notify the mine foreman, or his assistant as provided for hereinbefore in this act, of such danger, and upon leaving such place he shall place some plain warning at the entrance thereto to warn others from entering into the said danger and he shall not return to his place until ordered to do so by the mine foreman or his assistant. Each miner, or other person employed in a mine, shall securely prop the roof of the working place therein under his control, and shall obey any order or orders given by the superintendent or mine foreman relating to the width of his working place or safety of the same. Such miner or other person shall not be held to have violated the provisions of this section if the owner, lessee, agent, superintendent or mine foreman fail to supply the necessary props, caps, timber or necessary material as provided for in this act.

Each miner or other person shall avoid waste of props, caps, timber or other material. When he has props, caps, timber or other material unsuited for his purpose he shall not cover them up or destroy them but shall place same near the track where they can be readily seen. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

The working place which it is presumed the miner will keep safe for himself is confined to the particular locality which his duty all the time calls him, to work in,

whether mining, loading or anything else. Killio v. Northwestern Improvement Co., 47 Mont. 321, 322, Ann. Cas. 1915A, 1228, 132 Pac. 419.

§ 1709f. Duties of Machine-men.

(Section 84.) Machine runners and helpers shall use care while operating mining machines. They shall not operate a machine unless the shields are in place and shall warn all persons not engaged in the operating of a machine of the danger in going near a machine while in operation, and shall not permit such persons to remain near the machine while in operation. They shall examine the roof of the working place and see that it is safe before starting to operate the machinery. They shall not move the machine while the cutter chain is in motion.

When connecting the power cable to electric wires they shall make the negative or grounded connections before connecting to the positive and, when disconnecting the power cable, shall disconnect from the positive line before disconnecting the negative, or grounded. When positive feed wires extend into rooms they shall connect such wires to the positive wire on the entry before connecting the power cable and as soon as the power cable is disconnected shall disconnect such wire from the wire on the entry. They shall use care that the cable does not come in contact with metallic rails of the track and shall avoid, where possible, leaving the cable in water. If any machine men remove props which have been placed by the miner for the security of the roof, they shall reset such props as promptly as possible. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1709g. Duties of Motormen, Trip Riders and Drivers.

(Section 85.) Motormen and trip riders shall use care in handling the motors and cars and shall see that signals or markers, as provided for, are used as provided, and shall be governed by the speed provided for in this act in handling cars. They shall not run the motors with the trolley ahead of the motors, except in case where they cannot do the alternative, and then only at a speed of two miles an hour. They shall warn persons forbidden to ride on the motors or cars, and shall not permit such persons to ride on motors or cars contrary to the provisions of this act.

Drivers shall use care in handling cars, especially when going down extreme grades and at junction points.

Motormen, trip riders and drivers in charge of haulage trips passing through doors used as a means of directing the ventilation, shall see that such doors are closed promptly after the trip passes through. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1709h. Duties of Other Employees.

(Section 86.) No person shall enter a mine generating fire-damp so as to be detected by a safety lamp until the mine examiners make a report on the blackboard for that purpose as hereinbefore provided for in this act.

No person, unless accompanied by the mine examiner, shall go beyond a danger-signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. Any person being ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation shall not re-enter the mine until given permission to do so by the mine foreman.

No person other than the mine examiner shall remove any caution board or danger signal placed at the entrance to any working place or at the entrance to any old workings in a mine.

No person shall erase or change a mark of reference or monument made in connection with a measurement; change marks or dates or any caution board, or erase or change the dates at room or entry face, when made by the mine examiner; change the checks on cars, wrongfully check a car or do any act with intent to defraud. No person shall take a lighted pipe or other thing containing fire, except lanterns as provided for in this act, into any underground stable or barn.

No person shall place refuse in or obstruct any airway or break-through used as an airway. No workman or other person shall injure a water-gauge, barometer, aircourse, brattice equipment, machinery

or livestock; obstruct or throw upon any airway; handle or disturb any part of the machinery of the hoisting engine of a mine; open a door of a mine and neglect to close it; endanger the miners or those working therein; disobey an order given in pursuance of law, or do a willful act whereby the lives and health of persons working therein or the security of a mine or machinery connected therewith may be endangered. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1709i. Persons Permitted to Ride on Haulage Trips.

(Section 87.) No person or persons except those in charge of trips, superintendents, mine foremen, mine examiners, electricians, mechanics, and blacksmiths, when required by their duty, shall ride on haulage trips, except where by mutual agreement in writing between the superintendent or agent and the employees a special trip of empty cars is run for the purpose of taking employees into or out of the mine, or empty cars are attached to loaded trips, which shall not be run at a speed exceeding six miles per hour. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1709j. Employees Shall not Loiter nor Use Intoxicants Around the Mine.

(Section 88.) Each employee of a mine shall go to or from his place of duty by the traveling-ways provided; shall not travel around the mine or the buildings, where duty does not require, and when not on duty shall not loiter at, in or around the mine, the buildings or machinery connected therewith, except by permission of the owner, lessee, operator, superintendent or foreman.

No person shall go into or around a mine, the buildings or the machinery connected therewith, while under the influence of intoxicants. No person shall use, carry or have in his possession, at, in or around a mine, the buildings or the machinery connected therewith, any intoxicants. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710. Top and Bottom Men.

(Section 89.) At every shaft, operated by steam or other power, the operator must station at the top and the bottom of such shaft a competent man, charged with the duty of attending to signals, preserving order and enforcing rules, during the carriage of the men on cages. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710a. Lights on Landings.

(Section 90.) Whenever the hoisting or lowering of men occurs before daylight or after dark, or when the landing at which men leave or take the cage, car or cars is at all obscured by steam or otherwise, there must always be maintained at such landing a light sufficient to show the landing and surrounding objects distinctly. Lights shall also be maintained at each landing and the bottom of all shafts while men are at work underground. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710b. Regulations for Hoisting or Lowering of Men.

(Section 91.) Cages in shafts, or cars in any slope, on which men are riding shall not be lifted or lowered at a rate of speed greater than six hundred feet per minute.

No more than (12) twelve persons shall ride on any cage or car at any one time except where specially constructed man-cars are used on a slope.

No person shall carry any explosives, tools, timber or other material with him on a cage, car or cars in motion, in any shaft or any slope or incline plane while the men are being hoisted or lowered, except for use in repairing the shaft, slope or incline plane.

No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials unless the same is provided with some device by which the platform can be securely locked, and unless it is so locked whenever men or materials are being conveyed thereon.

The rope rider on any slope or incline plane shall, during working hours, see that all ropes and signals are in perfect working order, and, if he perceives anything wrong, he shall at once report the same to the mine foreman or his assistant.

He must be cautious when men are being hoisted out of or lowered into any slope and shall see that all safety appliances are properly attached and that all cars are securely coupled. He shall pay strict attention to all signals.

When more than twelve persons get on a cage or on one car on a slope or incline plane, except as above provided for, the bottom man, top man, or rope rider in charge of the lowering and hoisting of such persons shall order a sufficient number to get off to reduce the number to twelve persons on the cage or car, and the person or persons so ordered shall immediately comply.

The car or cars used to hoist or lower men into or out of any slope or on any plane shall be connected by safety chains, or some safety appliance must be used to maintain the trip in case of breakage of coupling or other connection. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710c. Rights of Men to Come Out.

(Section 92.) Whenever men who have finished their day's work, or who have been prevented from further work for any cause, shall come to the bottom of any shaft to be hoisted out, a cage shall be given them for that purpose, unless there is an available exit by slope or stairway in an escapement shaft, and providing there is no coal at the bottom to be hoisted. Whenever the designated number of persons for a cage-load shall arrive at the bottom of the shaft in which persons are regularly hoisted or lowered they shall be furnished with an empty cage and be hoisted. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710d. Stretchers, Blankets, etc.

(Section 93.) At every mine where men are employed underground it shall be the duty of the operator thereof to keep always on hand and at some readily accessible place a properly constructed stretcher, a woolen and waterproof blanket, and a roll of bandages, in good condition and ready for immediate use, for binding, covering and carrying anyone who may be injured at the mine; also to provide a comfortable apartment near the mouth of the mine in which anyone so injured may rest while awaiting transportation home, and to provide for the speedy transportation of anyone injured in such mine to his home. When more than one hundred and fifty men are employed in any one mine two stretchers, two woolen and

two waterproof blankets, with a corresponding supply of bandages, shall be provided and kept on hand. There shall also be provided and kept in store a suitable supply of linseed or olive oil for use in case men are burned by an explosion or otherwise. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710e. Oils to be Used in Coal Mines.

(Section 94.) (a) No person, firm or corporation shall compound, sell or offer for sale, for illuminating purposes in any coal mine, any oil other than oil composed of not less than eighty-four per cent of pure animal or vegetable oil, or both, and not more than sixteen per cent pure mineral oil, the gravity of such animal or vegetable oil shall not be less than twenty-one and one-half and not more than twenty-two and one-half degrees Baume scale measured by Tagliabue or other standard hydrometer, at a temperature of sixty degrees Fahrenheit; the gravity of such mineral oil shall not be less than thirty-four and not more than thirty-six degrees Baume scale, measured by Tagliabue or other standard hydrometer, at a temperature of sixty degrees Fahrenheit, and gravity of the mixture shall not exceed twenty-four degrees Baume scale, measured by Tagliabue or other standard, hydrometer, at a temperature of sixty degrees Fahrenheit. It is provided, however, that any material that is as free from smoke and bad odor, and of equal merit as an illuminant as a pure animal or vegetable oil, may be used at the pleasure of mine operators and miners.

(b) Each person, firm or corporation compounding oil for illuminating purposes in a coal mine or mines, shall, before shipment thereof is made, securely brand, stencil or paste upon the head of such barrel or package, a label which shall have plainly printed, marked or written thereon the name and address of the person, firm or corporation compounding the oil therein contained, the name and address of the person, firm or corporation having purchased same, the date of shipment, the percentage and gravity in degrees Baume scale, at a temperature of sixty degrees Fahrenheit, of each of the component parts of animal, vegetable and mineral oil contained in the mixture, and the gravity in degrees Baume scale of the mixture, at a temperature of sixty degrees Fahrenheit.

Each label shall have printed thereon, over the facsimile signature of the person, firm or corporation having compounded the oil, the following: "This package contains oil for illuminating purposes in coal mines in the state of Montana, and the composition thereof as shown herein is correct."

(c) No person, firm or corporation shall sell or offer for sale any oil for illuminating purposes in any coal mine unless the barrel or package in which such oil was received bears the label of the compounder as provided for in this act.

Each person, firm or corporation selling or offering for sale any oil for illuminating purposes in any coal mine, shall, upon request of the state coal mine inspector, or of any officer or duly authorized agent of any owner or lessee of a coal mine located within five miles of the point where such oil is offered for sale, or of any coal miner, submit such oil for examination, and upon request give a sample of such oil from one or more original containers selected by such inspector, officer, agent or miner for the purpose of making a test thereof.

(d) No person shall adulterate any oil, either before or after taking same from original containers, and shall not alter, transfer or reuse any label placed upon any container.

(e) No person shall use for illuminating purposes in any coal mine any oil other than oil sufficiently provided for in this act. Each person while in a coal mine shall, upon request of the inspector of mines or any officer or duly authorized agent of the owner or lessee, submit his lamp and supply of oil for examination and upon request give sample of oil for purpose of making test thereof, and state from whom purchased.

The provisions of this act relating to compounding, sale and use of oil for illuminating purposes in coal mines shall apply to oil used in lamps for open lights only, but do not apply to drivers, rope riders or motor men while acting in such capacity. The oil used in safety lamps may be of such composition as will best serve the purpose. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710f. Boundary Lines.

(Section 95.) In no case shall the workings of a coal mine be driven nearer than ten feet to the boundary line of the coal rights pertaining to said mine, except for the purpose of establishing connecting workings between properties owned by the same person or an underground communication between contiguous mines as provided for elsewhere in this act. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710g. Notice to Inspectors.

(Section 96.) Immediate notice must be conveyed to the state coal mine inspector by the operator interested:

First: Whenever an accident occurs whereby any person receives serious or fatal injury:

Second: Whenever work is commenced to sink a shaft, slope or drift, either for hoisting or escapement purposes.

Third: Whenever it is intended to abandon any mine or to reopen any abandoned mine.

Fourth: Upon the appearance of any large body of fire-damp in mine, whether accompanied by explosion or not, and upon the occurrence of any serious fire within the mine or on the surface around the mine.

Fifth: When the workings of any mine are approaching near any abandoned mine believed to contain accumulation of water or gas.

Sixth: Upon the accidental closing or intended abandonment of any regularly established passageway to an escapement outlet. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710h. Duty of Inspectors.

(Section 97.) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury the state coal mine inspector shall, if he deem it necessary from the facts reported, and in all cases of loss of life, immediately go to the scene of said accident or send some competent person authorized by him. It shall, moreover, be the duty of every operator of a coal mine, or his agent, to make and preserve for the information of the inspector, upon uniform blanks furnished by the said inspector, a record of all injuries sustained by any employees in the pursuance of their regular occupation.

The state coal mine inspector may also make any original or supplementary investigation which he may deem necessary as to the nature and cause of any accident within his jurisdiction and shall make a record of the

circumstances attending the same and of the result of his investigations for preservation in the files of his office.

To enable him to make such investigation he shall have the power to compel the attendance of the witnesses and to administer oaths or affirmations to them, and the cost of such investigation shall be paid by the county in which such accident has occurred in the same manner as the cost of coroner's inquest is paid. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710i. Coroner's Inquest.

(Section 98.) If any person is killed by any explosion, or other accident, the operator must also notify the coroner of the county, his authorized deputy or, in the absence of either or in the inability of either to act, any justice of the peace of said county for the purpose of holding an inquest concerning the cause of such death. At such inquest the state coal mine inspector, his deputy or authorized representative shall offer such testimony as he may be possessed of, and he may question or cross-question any witness appearing in the case; and the owner, agent or manager of the coal mine, either in person or by counsel, shall also be at liberty to examine or cross-examine any witness at any such inquest.

Any person having personal interest in or employed in the management of the mine in which the accident occurred shall not be qualified to serve on the jury impaneled on the inquest; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such to be sworn or sit on the jury; nevertheless, when possible, one-third of the jury-men shall be miners.

Unless the state coal mine inspector, or some person authorized by him, is present at an inquest held upon the body of any person, where death may have been caused by any such accident, the coroner shall adjourn the same and, by written notice or telegram delivered or sent to the state coal mine inspector at least two days before holding the adjourned inquest, given notice of the time and place of the holding of the same. Before such adjournment the coroner, his authorized deputy or the justice of the peace, may take evidence to identify the body and order the interment thereof. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710j. Code of Signals at Coal Mines.

(Section 99.) At any coal mine operated by shaft more than one hundred feet in depth, or by slope, the manner of signaling to and from the bottom man, the top man, the rope riders and the engineer shall consist of wires or a tube or tubes through which signals shall be communicated by electricity, compressed air or other pneumatic devices.

The following signals are provided for use at coal mines where signals are required:

One ring or whistle:—One ring or whistle shall signify to hoist coal or the empty cars or cage, and also to stop either when in motion.

Two rings or whistles:—Two rings or whistles shall signify to lower cage or car.

Three rings or whistles:—Three rings or whistles shall signify that men are coming up; when return signal is received from engineer, either

by bell, whistle or slight movement of the trip, men will get on cage or cars and the cager or rope rider shall ring or whistle "one" to start.

Four rings or whistles:—Four rings or whistles shall signify to hoist slowly, implying danger.

Five rings or whistles:—Five rings or whistles shall signify accident in the mine and call for stretchers.

From top to bottom:—One ring or whistle shall signify—All ready, get on cage or cars.

From top to bottom:—Two rings or whistles shall signify—To send away empty cage or cars.

Provided: That the management of any mine may, with the consent of the state coal mine inspector, add to or change this code of signals at their discretion for the purpose of increasing its efficiency or of promoting the safety of the men in said mine, but, whatever code may be established and in use at any mine it must be approved by the state coal mine inspector, and shall be conspicuously posted at the top and at the bottom of every shaft or slope, and at the landing place on all rope haulage systems, also in all engine-rooms for the information and instruction of all persons. In any coal mine, where more than fifty men are employed underground, one or more telephones shall be installed communicating with the surface. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710k. Duties of Hoisting Engineers.

(Section 100.) The hoisting engineer on any shaft, slope or drift at any mine shall be in constant attendance at his engine during working hours when there are workmen underground. He shall not permit anyone to enter or to loiter in the engine-room, except those authorized by their positions or duties to do so, and he shall hold no conversation with any officer of the company or other person, or leave his engine, while in motion or while his attention is occupied with the signals. A notice to this effect shall be posted on the door of the engine-house.

The hoisting engineer must thoroughly understand the established code of signals, and such signals must be delivered in the engine-room in a clear and unmistakable manner, and he shall not recognize any signals other than those provided for in this act, or such as have been approved by the state coal mine inspector; and when he has the signal that men are on the cage, car or cars, he must work his engine only at the rate of speed herein provided for by this act. He shall permit no one to handle or meddle with any machinery under his charge, nor suffer anyone who is not a certified engineer to operate his engine except for the purpose of learning to operate it or repair same, and then only in the presence of the engineer in charge and when men are not on the cages, car or cars. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710l. Qualifications of Miners.

(Section 101.) Each person desiring to work by himself at mining or loading shall first produce satisfactory evidence, in writing, to the mine foreman of the mine in which he is employed, or to be employed, that he has worked at least nine months with, under the direction of, or as a practical miner, provided, however, that if the mine in which such person is to be employed generated explosive gas or fire-damp, he shall have worked not less than twelve months with, under the direction of, or as practical miner. Until

a person has so satisfied the mine foreman of his competency, he shall not work or be permitted to work at mining or loading unless accompanied by a miner holding the foregoing qualifications. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710m. Operators must Make Reply to Statistical Inquiry.

(Section 102.) Every coal mine operator, whether person, copartnership or corporation, shall within thirty days after receipt of blanks from the state coal mine inspector asking for statistical data relative to any coal mine operated by the person, copartnership or corporation addressed, fill in the blanks of such forms, answering all interrogations correctly and mail the same to the state coal mine inspector. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710n. Penalties.

(Section 103.) If any operator, company or corporation neglects to comply with, or violate, the requirements of this act, either in part or in whole, or if any owner, operator, manager, superintendent, mine foreman or his assistant coerces, intimidates or causes any employee to do the things prohibited, or causes them to do as provided against in this act, such operator, company, corporation, manager, superintendent, mine foreman or his assistant shall be liable to a penalty of twenty-five dollars for each and every day during which the offense continues; proceedings to be instituted in any court of competent jurisdiction in the county in which such offense is committed.

In case of the failure of any operator, company or corporation to comply with the provisions of this act in relation to the sinking of escapement shaft or the ventilation of mines the state coal mine inspector, through the county attorney for the county in which such failure occurs, or through any other attorney in case the county attorney fails to act promptly, shall proceed against such operator by injunction, without bond, to restrain him from continuing to operate such portion of the mine until all legal requirements have been complied with.

When the state coal mine inspector shall discover that any section of this act, or any part thereof, is being neglected or violated he shall order immediate compliance therewith and in case of continued failure to comply shall, through the county attorney or any other attorney in case of his failure to act promptly, take the necessary legal steps to enforce compliance therewith through the penalties herein prescribed.

If it becomes necessary, through refusal or failure of the county attorney to act, for any other attorney to appear for the state in any suit involving the enforcement of any of the provisions of this act, reasonable fees for the services of such attorney shall be allowed by the county commissioners in and for the county in which such proceedings are instituted.

Any employee engaged at work in or around any coal mine in the state of Montana, or any other person, who violates any part of this act shall for each offense be liable to a penalty not exceeding five dollars, or in default of payment shall be imprisoned in the county jail for a period of time not exceeding ten days, proceedings to be instituted in any court of competent jurisdiction in the county in which such offense is committed. Any person, firm or corporation who compounds, sells or offers for sale to dealers any oil for illuminating purposes in any coal mine in this state, con-

trary to the provisions of section 97 of this act, shall, upon conviction thereof, be fined not less than fifty dollars nor more than one hundred dollars and for the second offense, or any subsequent offense shall be fined not less than one hundred dollars or imprisonment not less than thirty days nor more than sixty days, or both at the discretion of the court, proceedings to be instituted in any court of competent jurisdiction.

Any person, firm or corporation who sells, or offers for sale, to any employee of a coal mine any oil for illuminating purposes in a mine contrary to the provisions of section 97 of this act, shall, upon conviction thereof, be fined not less than twenty-five dollars or more than fifty dollars, and for a second or subsequent offense shall be fined not less than twenty-five dollars and not more than fifty dollars or imprisonment, not less than ten days and not more than twenty days, or both at the discretion of the court, proceedings to be instituted in any court of competent jurisdiction. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710o. Definitions.

(Section 104.) "Mine." In this act the words "mine" and "coal mine" used in their general sense are intended to signify any and all underground parts of the property of a mining plant which contribute, directly or indirectly, under one management, to the mining or handling of coal.

(b) "Excavations" or "workings." The words "excavations" and "workings" signify any and all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms and working place, whether abandoned or in use.

(c) "Shafts." The term "shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape-ment, or for hoisting or lowering of men or material in connection with the mining of coal.

(d) "Slope" or "drift." The terms "slope" and "drift" mean respectively an incline or horizontal way, opening or tunnel to a seam of coal to be used for the same purpose as a shaft.

(e) "Following shot." A "following shot" is a shot which is dependent in its action on the result of another shot.

(f) "Operator." The term "operator" as applied to the party in control of a mine under this act, signifies the person, firm or body corporate who is the immediate proprietor as owner or lessee of the plant and, as such, responsible for the condition and management thereof.

(g) "Mine foreman." The "mine foreman" is a person who is charged with the general direction of the underground work, or both the underground work and the outside work of any coal mine, and who is commonly known and designated as "mine boss."

(h) "Mine examiner." The "mine examiner" is the person charged with the examination of the condition of the mine before the miners are permitted to enter it, and who is commonly known as the "fire boss." [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710p. Repealing Clause.

(Section 105.) The following sections 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709 and 1710, 2023 of the Revised Codes of the State of Montana and Chapters

64 and 69 of the Laws of 1909, of the State of Montana are hereby expressly repealed, and all other acts or parts of acts in conflict herewith. [Amendment approved March 7, 1911; Laws 1911, c. 120, p. 261.]

§ 1710q. Appropriation.

(Section 106.) There is hereby appropriated out of the general fund of the state not otherwise appropriated, sufficient funds for the salary of the state coal mine inspector and for the maintenance of the boards herein provided for and the proper enforcement of the act according to its intent and purpose.

(Section 107.) All acts and part of acts in conflict with this act are hereby repealed.

(Section 108.) This [§§ 1679-1710q herein] shall take effect and be in force from and after (90) ninety days from and after its passage and approval by the Governor. [Approved March 7, 1911; Laws 1911, c. 120, p. 261.]

MINING REGULATIONS.

§ 1711. Inspector of Mines—Appointment and Qualification.

The Governor, by and with the advice and consent of the Senate must appoint an inspector of mines, who shall be at least thirty years of age, a resident of Montana at least one year, who shall be theoretically and practically acquainted with mines and mining in all its branches, and he shall hold his office for four years unless sooner removed by the Governor. No person shall hold the position of inspector of mines while an employee or officer of any mining company or corporation. The inspector of mines must devote his entire time to the duties of his office, and his salary is two thousand five hundred dollars per annum. [Amendment approved March 4, 1909; Laws 1909, p. 95.]

§ 1712. Deputy Inspector of Mines.

The Governor, by and with the consent of the Senate, must appoint a deputy inspector of mines who shall possess like qualifications to those required of the inspector of mines, who shall hold his office for four years, unless sooner removed by the Governor. No person shall hold the office of deputy inspector of mines while an employee or officer of any mining company or corporation. The deputy inspector of mines must devote his entire time to the duties of his office, under the supervision and direction of the inspector of mines, and his annual salary shall be two thousand four hundred dollars (\$2,400) per annum. [Amendment approved March 2, 1911; Laws 1911, p. 128. Prior amendment: Laws 1909, p. 95.]

§ 1726a. Ventilation of Quartz Mines, Duty of Operator to Furnish.

(Section 1.) It shall be the duty of all mining operators of any and all quartz mines in this state, when working to a greater depth than three hundred feet, or any general manager, superintendent, or foreman acting on behalf of the above, whether said mining property is operated by tunnel, shaft, or other opening, to provide where necessary, feasible and practicable, a suitable and practical method for ventilating said mine either by separate shaft, or other mine working of suitable size or capacity which said ventilating system shall provide for the delivery of air to all portions of said mine that are being operated, and also provide reasonable means for carrying away of noxious fumes, gas, or smoke. [Approved March 2, 1911; Laws 1911, c. 72, p. 135.]

§ 1726b. Toilet Places in Mines—Underground Stables.

(Section 2.) It shall be the duty of all mining operators to provide suitable and practicable toilet arrangements, or places which may be used for toilet purposes, for the use of employees in mines, such toilets, or sanitary arrangements may consist of a properly constructed toilet-car, or receptacle where it is practical and feasible to use the same, that may be taken into the different working levels of a mine, and when such cars, or receptacles are used they shall be sent to the surface each day for proper cleaning or disinfecting. Where proper toilet apparatus is not provided, the employee shall be allowed to go to the surface or other suitable place, which place shall be kept in a reasonably sanitary condition. Underground stables shall be cleaned and droppings in waste taken to the surface each day. This section applies to mines working thirty men or over. [Approved March 2, 1911; Laws 1911, c. 72, p. 136.]

§ 1726c. Protections and Guard-rails in Case of Shafts and Underground Openings.

(Section 3.) Underground workings consisting of chutes, manways and winzes, or any opening kept for ventilating purposes, or for the removal of ore, or waste material, shall when necessary be protected by guard-rails, or by a suitable cover known as a grizzly, made of good substantial timbers, or metal bars. Shafts at stations shall be protected by guard-rails at every level. In vertical manways used by employees exclusively for traveling purposes in addition to proper ladders there shall be suitable landings, placed not to exceed thirty feet apart and so far as feasible and practicable all such manways, or air course used as an escape for men must be kept free from all obstructions. [Approved March 2, 1911; Laws 1911, c. 72, p. 136.]

§ 1726d. Violation of Act a Misdemeanor.

(Section 4.) Every mining operator whether person or corporation failing to comply with any of the provisions of this act, or any general manager, superintendent, or foreman acting on behalf of such mining operator and failing to comply with any of the provisions of this act, shall be guilty of a misdemeanor. [Approved March 2, 1911; Laws 1911, c. 72, p. 137.]

PROTECTION OF EMPLOYEES.**§ 1728. Inclosures for Motormen of Street-car.**

From and after said November 1, A. D. 1913, it shall be unlawful for any person or persons, partnership, or corporation so owning or operating street railways using steam, electric or cable cars, or any superintendent or managing officer or agent thereof, to cause or to permit to be used upon such line of railway, between the said November 1st and May 1st of each and every year, any car or cars upon which the services of any employee such as specified in section 1 of this act [this section] is required, unless such car or cars shall be provided with the inclosure required by said section 1728 (1) of this act [this section]. Except that the type of cars known as open cars or summer cars must be equipped with wind shield constructed of glass, iron and wood or other suitable material to extend completely across front of said car or cars to protect such employees from exposure to the inclemencies of the weather. [Amendment approved March 15, 1913; Laws 1913, p. 441.]

§ 1730a. Vestibule of Street-cars to be Heated.

(Section 1.) From and after November 1, 1913, it shall be unlawful for any corporation, person, or association, owning or controlling or operating any street railway, electric car or trolley car within the state of Montana, to run or operate its cars in the regular service of carrying passengers, during the months of November, December, January, February and March, without first providing that the vestibule of such cars shall be heated in the same manner as the interior of said cars at all times.

(Section 2.) Any corporation, person, or association owning, controlling, or operating any street railway, electric, or trolley car, failing to comply with the provisions of this act shall be liable to a fine of ten (\$10) dollars, per car for each day operated in violation of the provisions of this act. [Approved March 1, 1913; Laws 1913, c. 44, p. 64.]

§ 1736. Hours of Labor in Mines or Tunnels.

The period of employment of workmen in all underground mines or workings, including railroad or other tunnels, shall be eight (8) hours per day, except in cases of emergency where life and property is in imminent danger. [Amendment approved February 11, 1911; Laws 1911, p. 25.]

§ 1739.

Injury to employee while violating this section and § 1740, post. See note post, § 6486.

No action lies when the plaintiff must base his claim, in whole or in part, on the violation of a criminal or penal statute of the state. *Melville v. Butte-Balaklava Copper Co.* 47 Mont. 1, 7, 130 Pac. 441.

If a statute makes a requirement, or prohibits a thing, for the benefit of a person or class of persons, one injured by reason of a violation of it, if free from fault himself, is entitled to maintain an action against him by whose disobedience he has suffered injury; and this is true whether the statute is penal in its character or not; a violation of the statute is legal negligence. *Melville v. Butte-Balaklava Copper Co.*, 47 Mont. 1, 6, 130 Pac. 441.

Editorial Notes.

Statutory restriction of hours of labor on public works. *Ann. Cas.* 1912A. 773.

§ 1740.

The person who occupies a position of authority over one engaged as an employee and who exercises control over him is the employer who comes within the prohibition of the eight-hour law. *State v. Hughes*, 38 Mont. 458, 471, 100 Pac. 610.

One who does not sustain the relation of employer to any of the men employed by subcontractors is not answerable for the conduct of the latter in requiring their men to work more than eight hours per day. *State v. Hughes*, 38 Mont. 468, 471, 100 Pac. 610.

§ 1741.

Evidence insufficient to support a verdict finding the defendant railway company guilty of a violation of this section and section 1742, post, prohibiting railroads from requiring their trainmen to work more than sixteen consecutive hours. *State v. Northern Pac. Ry. Co.*, 41 Mont. 557, 564, 111 Pac. 141.

§ 1745a. Hours of Telephone Operators.

(Section 1.) On all lines of public telephones, operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company or corporation to hire or employ any operator or operators, or other person or persons to run or operate a telephone board or boards for more than nine (9) hours, in twenty-four hours in cities or towns having a population of three thousand inhabitants, or over, provided, however, that the provisions of this act shall not apply to any person or persons, operator or operators, operating any telephone board or boards more than nine (9) hours in each twenty-four for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(Section 2.) Any owner, lessee, company or corporation, who shall violate any of the provisions of this act shall upon conviction be punished by a fine of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, and each and every day that such owner, lessee, company or corporation, may continue to violate any of the provisions of this act, shall be considered a separate and distinct offense and shall be punished as such. [Approved March 4, 1909; Laws 1909, c. 75, p. 103.]

§ 1745b. Hours of Labor and Seats for Female Employees.

(Section 1.) No female shall be employed in any manufacturing, mechanical or mercantile establishment, telephone exchange room, or office, or telegraph office, laundry, hotel or restaurant in this state, for more than nine hours in any one day. The hours of work may be so arranged so as to permit the employment of females at any time so that they shall not work more than nine hours during the twenty-four of any one day, provided that females may be employed, in retail stores to work, not to exceed ten hours in any one day for one week immediately preceding Christmas Day; and provided further, that overtime at extra compensation shall be allowed where life or property is in imminent danger.

(Section 2.) Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

(Section 3.) Any employer who shall require any female to work in any of the places mentioned in section 1, more than the number of hours provided in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ, so that they shall not work more than the number of hours provided for in this act during any day of the twenty-four hours, or who shall fail, neglect or refuse to provide suitable seats, as provided in section 2 of this act, or who shall permit or suffer any overseer, superintendent or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined for each offense not less than fifty (\$50) dollars, nor more than two hundred (\$200) dollars, or be imprisoned in the county jail for a period of not less than ten nor more than sixty days, or both such fine and imprisonment. [In effect March 15, 1913; Laws 1913, c. 108, p. 450.]

§ 1745c. Medical Aid for Railway Employees.

(Section 1.) In cases of injuries to or received by any railroad trainmen or employee of any railroad doing business in this state, which said injuries shall have been received during the regular course of employment of said railroad trainmen or employee, any one of said railroad trainmen or employee shall have the right, and is hereby empowered and given authority to call upon and retain the services of the nearest practicing physician or surgeon to care for and treat any such injured trainmen or employee, during and until such time as one of the regularly employed and paid physician or surgeon of such railroad corporation can and is able to treat and care for said railroad trainmen or employee.

(Section 2.) In cases where the services of any physician or surgeon other than the regularly employed physician or surgeon of the railroad

corporation are retained and hired as provided in section 1, of this act, such physician or surgeon shall be compensated and paid a reasonable fee for such services performed by him as provided in section 1 of this act.

(Section 3.) If any railroad corporation refuses or neglects to pay for the services of any such physician as hereinbefore provided for within a reasonable time after such physician and surgeon has rendered the services therefor, such railroad corporation shall be guilty of a misdemeanor. [Approved March 6, 1909; Laws 1909, c. 95, p. 125.]

VITAL STATISTICS.

§ 1766. Vital Certificates—Local Registrars.

The health officer of each city or town shall be the local registrar in and for the city or town of which he is health officer, and he shall perform all the duties of local registrar as hereinafter provided. And when it may appear necessary for the convenience of the people of any locality, the state registrar is hereby authorized, with the approval of the state board of health, to appoint one or more suitable and proper persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial and removal permits in and for such portions of the county or district as may be designated in their appointments and they shall be subject to the same requirements, and obligations as the local registrars and shall make returns directly to the state registrar, as hereinafter provided.

And any justice of the peace of any township is hereby required to act as local registrar of births and deaths for the district in which he resides when called upon to do so by the state registrar of births and deaths. [Amendment approved February 23, 1911; Laws 1911, p. 69.]

§ 1770. Death Certificates and Burial Permits.

That the undertaker or person acting as undertaker, shall be responsible for obtaining and filing the certificate of death with the registrar, and securing a burial permit prior to any disposition of the body. He shall obtain the personal and statistical particulars required, from the person best qualified to supply them, and present the certificate to the attending physician for the medical certificate of the cause of death, and said attending physician shall, upon such certificate coming to his notice, forthwith, and without delay, make his certificate of the cause of death, and said undertaker shall then present the completed certificate to the registrar to secure the burial or removal permit. The undertaker shall deliver duplicate burial permit to the sexton, or person in charge of the place of burial, before interring the body. The medical certificate shall be made and signed by the attending physician, if any, last in attendance on the deceased who shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which the death occurred. And the cause of death, and all other facts required shall in all cases be stated in accordance with the rules and regulations of the state registrar, and if any undertaker, attending physician or registrar, shall fail to perform any of the acts hereinabove prescribed, he shall be guilty of a misdemeanor. [Amendment approved March 3, 1909; Laws 1909, p. 56.]

§ 1787.

An attorney, who represents the board of stock commissioners, has a right to

appear in aid of a prosecution for the larceny of a steer. *State v. Biggs*, 45 Mont. 400, 403, 123 Pac. 410.

LIVESTOCK REGULATIONS.

§ 1789a. Estray Law—Stock Inspector—Sales and Branding.

(Section 1.) That the state board of stock commissioners, by and through its legally appointed stock inspectors, be and it is hereby authorized to take possession of any and all estrays found running at large within the state of Montana and to dispose of the same, subject to the following restrictions.

(Section 2.) Any stock inspector appointed by the state board of stock commissioners shall take into his possession all estrays found within his district, and shall hold such estrays so collected by him in his possession, and care for the same in the cheapest and most practicable manner for a period of not less than thirty (30) days, nor more than sixty (60) days, during which time he shall advertise the facts that he holds such estray or estrays, and that unless claimed by the owner thereof he will on a date to be specified in said notice sell such estray, or estrays, at public auction to the highest bidder for cash, which said notice shall be published in the newspaper doing the county printing of the county wherein such estray or estrays are found, and in addition thereto in a paper published in the town or city nearest the place at which such estray is held, which said notice shall be published at least once a week for four (4) consecutive weeks, and shall contain a statement of the date of the sale, the place where such sale is to held, and a general description of such estray, including the sex of the same and the approximate age, together with an illustration of the brand and the position of such brand upon such estray, together with a description of the place or locality where such estray was found or taken up; and the owner of such estray may appear and claim the same at any time prior to the sale or shipment, as hereinafter provided, and without cost or expense to said owner.

(Section 3.) On the date specified in the notice provided in section two (2) of this act, such stock inspector shall cause said estray or estrays to be sold at public auction to the highest bidder for cash; and before removal from said sale the said stock inspector shall cause the said estray or estrays to be branded with the recorded estray brand of the state board of stock commissioners.

(Section 4.) All expenses attending the collecting, holding, advertising, and selling of such estray or estrays shall be paid out of the gross proceeds of the sale of such estray or estrays, and the balance of the proceeds of such sale shall be forwarded to the secretary of the state board of stock commissioners to be by him advertised as estray funds in the manner now provided by law, and such proceeds shall be subject to claim by the owner of the animal for a period of two (2) years from the date of such sale; provided, that in the event the owner of such estray claims said animal prior to the sale thereof, the expense theretofore incurred by the stock inspector shall be paid by the state board of stock commissioners as an expense of said commission.

(Section 5.) An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt over one year old, cow, ox, bull, stag, steer, heifer or calf over one year old, not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or through the post-office designated upon the records of the recorder of marks and brands,

or which owner cannot be located by the stock inspector of the district where such estray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein. [Approved February 25, 1915; Laws 1915, c. 34, p. 50.]

Editorial Notes.

Estrays, general features and constitutionality of statutes respecting.
8 Am. St. Rep. 271.

Summary proceedings to impound

and sell animals. 90 Am. St. Rep. 211.

When animal is "estrays" or "at large." 9 Ann. Cas. 284.

§ 1789b. Disposition of Proceeds of Sale of Estrays.

(Section 1.) That all unclaimed money which is now in the hands of the state board of stock commissioners, or in the possession of the secretary or treasurer of said board, received from the sale of estray cattle or horses, shall be fully accounted for and paid over to the state treasurer of the state of Montana within thirty (30) days from and after the passage and approval of this act.

(Section 2.) Immediately upon the passage of this act the state examiner shall investigate the books of account of said board and its officers, respecting the methods of administering said funds in the past, and after the completion of such examination he shall at once make full and complete report with reference thereto to the Governor.

(Section 3.) All of said funds which shall have been in the possession of the state board of stock commissioners, or its officers for a period of two years or over, shall be by the state treasurer at once deposited to the credit of the stock inspection and detective fund to be used and expended as provided by law.

(Section 4.) The proceeds derived from the sale of all estray cattle or horses sold either within or without the state, shall hereafter be at once transmitted to the state treasurer of the state of Montana, together with a statement of the net proceeds derived from the sale, and such proceeds shall be paid and turned over by the treasurer to the owner of the recorded brand on the animal upon request of the secretary of the state board of stock commissioners and after the approval of the state board of examiners; it being hereby intended that as to the ownership of the animals sold determinable from the brands reported on such animals, that the secretary of the board of stock commissioners, or the board of stock commissioners, shall first determine the ownership of such animals sold, and that the returns shall not be paid to such owner by the treasurer until after the state board of examiners shall first have passed upon and approved such payment. [Approved January 30, 1911; Laws 1911, c. 2, p. 6.]

§ 1789c. Determination of Ownership.

(Section 5.) A full description of the estrays for which the proceeds derived from their sale remains in the hands of the treasurer unclaimed shall be published for the period of four (4) consecutive issues next after May 1st of each year, in four (4) newspapers, one of which shall be published in the city of Helena, and the others in the cities of Billings, Miles City and Fort Benton, and when such publication shall have been made,

and the proceeds from the sale of such animals shall have remained in the hands of the state treasurer for a period of two years, it shall be by the treasurer at once placed to the credit of the stock inspection and detective fund.

(Section 6.) Immediately upon receipt by the state treasurer of any funds derived from the sale of livestock, he shall communicate with the secretary of the state board of stock commissioners, in writing, giving the description of the animals and brands, as same were reported to him, to the end that inquiry and investigation may be at once made respecting ownership.

(Section 7.) Whenever it shall appear that the brand on an animal sold and reported as an estray was not recorded, or is blotched or dim, no person shall be paid therefor by the state treasurer until the board of stock commissioners shall first have investigated the case and determined ownership, and if said board of stock commissioners determine that the animal was without ownership possible of identification, thereupon the proceeds from the sale of such animal shall be at once placed to the credit of the stock inspection and detective fund.

For the purpose of considering such cases and determining the ownership of such animal or animals, the board of stock commissioners is hereby required to meet in the city of Helena in the months of May and December of each year. [Approved January 30, 1911; Laws 1911, c. 2, p. 7.]

§ 1791. Recording Brands—Fees.

Whenever any person wishes to have recorded a mark or brand for use on any animal, he shall make application therefor direct to the general recorder of marks and brands, which application must be in writing and must contain the name, residence, and postoffice address of the applicant, and the species of the animals on which the mark or brand is to be used. The said recorder shall thereupon designate the particular mark or brand to be used by the applicant, defining the position on the animal upon which the mark or brand shall be placed, and designate the species of animals on which the same is used. The general recorder of marks and brands must keep a record in a book kept by him for that purpose, of the particular mark or brand, the position on the animal where the same is used, the species of animal on which the same is placed and the name and address of the owner of such mark or brand and the date of recording; and a certified copy of such record, stating and containing all the things required to be recorded, shall be furnished without cost to the owner of such mark or brand. Such record shall be a public record and shall be prima facie evidence of the facts therein recorded and shall be open to the inspection of the public.

In all actions or proceedings, whether civil or criminal, such certified copy shall be prima facie evidence of the ownership of such mark or brand and shall be prima facie evidence that the owner of such mark or brand is the owner of the animal on which the same appears in the position and on the species of animals stated in such certificate.

The general recorder of marks and brands shall charge and collect from the applicant the fee of two (2) dollars for each mark or brand recorded, which shall be paid in to the stock inspector and detective fund. [Amendment approved February 18, 1915; Laws 1915, p. 30.]

The purpose of the act concerning the recording of marks and brands, §§ 1790-1795, is to secure to the person who records his brand the exclusive use of the design adopted; and the object sought in requiring a brand to be vented is to foreclose the vendor's claim on the animal

sold. *Cuerth v. Arbogast*, 48 Mont. 209, 221, 136 Pac. 383.

Editorial Notes.

Brands on animals as evidence of ownership. Ann. Cas. 1913E, 133; 12 Ann. Cas. 414.

§ 1794. Slaughtering of Animals—Place of and Keeping of Hides.

All persons slaughtering cattle must keep the hides, with the ears attached, for ten days, and persons having such hides in their possession must exhibit the same for examination, upon demand being made by any person. No person, whether the owner thereof or not, shall slaughter any cattle upon the public range of this state unless he is at such time a member, or an employee of a member, of an organized round-up of cattlemen, and then only for the immediate consumption by the persons engaged in such round-up. Persons, except as provided in this section, shall slaughter cattle only upon the premises owned or occupied by them, or on which they have therefor been granted a written permit so to do by the owner or person occupying the premises. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor. [Amendment approved March 4, 1909; Laws 1909, p. 96.]

§ 1795a. Re-recording of Livestock Brand or Mark.

(Section 1.) Every person, company or corporation having horses, cattle or other livestock, and owning a brand or mark, or brands or marks, for the same, shall record such brand or brands, or mark, or marks, with the general recorder of marks and brands, on or before the first day of November, 1912, such record to be made in the manner now provided by existing laws for the recording of marks and brands.

(Section 2.) On and after the first day of November, 1912, no person, company or corporation shall claim or own any brand or mark which has not been re-recorded in accordance with the provisions of this act, and any failure to re-record a brand or mark under the provisions of this act shall be deemed an abandonment of the same, and any person, company or corporation shall be at liberty to adopt, and use any brand or mark so abandoned; provided, that no person, company or corporation shall be at liberty to claim or use any such abandoned brand or mark until after he has caused the same to be recorded in his own name, under the provisions of this act, and provided further, that before such brand or mark may be claimed or used by such person, company or corporation, the notice specified in the following section shall have been given.

(Section 3.) It shall be the duty of the general recorder of marks and brands to notify the owner of any recorded mark or brand at least sixty days prior to the expiration of the time in this act provided for the re-recording of any mark or brand, of his right to re-record the same. Such notice shall be given in writing and by registered mail, and shall be addressed to such owner at the postoffice address named upon the books of said general recorder of marks and brands, and such notice shall be complete at the expiration of sixty days from the date of its mailing by said general recorder of marks and brands.

(Section 4.) It shall be the duty of the general recorder of marks and brands to publish in each and every newspaper printed within the state, at least six times, beginning not less than six weeks prior to the expiration

of time in this act providing for the re-recording of any mark or brand, a notice of the expiration of the time fixed for the re-recording of any mark or brand and of the right of all persons owning any mark or brand to re-record the same, which notice shall not exceed two hundred words, and the general recorder of marks and brands shall also furnish to each newspaper copy to be used as a news item or editorial, calling attention to said publication.

(Section 5.) All re-recording of old brands or marks, and all recording of new brands or marks shall be done and made in all respects in accordance with the provisions of law now existing for the recording of marks and brands.

(Section 6.) For re-recording of any old brand or mark, the general recorder of marks and brands shall be entitled to receive the sum of twenty-five cents; for recording a new brand or mark, or any old brand or mark in the name of a new owner, the general recorder of marks and brands shall be entitled to receive the fees now allowed by law, all such fees to be by the general recorder of marks and brands deposited to the credit of the stock inspector and detective fund.

(Section 7.) A bill of sale duly witnessed of any recorded mark or brand shall be prima facie evidence of ownership of such brand. [Approved February 16, 1911; Laws 1911, c. 27, p. 44.]

§ 1803a. Employment of Stock Inspector by County Commissioners.

The board of county commissioners of each county, except in counties of the first class, has the power, to employ a stock inspector whenever the board is satisfied from its own knowledge, or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock are being stolen, slaughtered, or otherwise disposed of contrary to law in such county, and in such manner that the public officers of the county are not in position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution. Whenever such a stock inspector is so employed, the employment shall be only for the case or cases then under investigation, and his compensation shall be at the rate of not to exceed the sum of seven dollars and fifty cents per day, and necessary expenses for the time actually engaged in such work, and he shall be paid by a warrant on the general fund of the county, and during the existence of such appointment he shall be vested with the same police power and authority as the sheriff; within the limitation of the purposes for which he is appointed.

Whenever a stock inspector is so employed in the investigation of a crime, and a reward has been offered under section 1 of this act for the apprehension and conviction of the party or parties guilty of such crime, such inspector shall not be entitled to any part of said reward.

The proceedings and meetings of the board of county commissioners relating to the employment of a stock inspector shall not be made public until after the investigation of the crime or crimes by said inspector is completed, and any officer who divulges the name of the stock inspector employed, or the purpose of his employment during such period shall be guilty of a misdemeanor. [Approved March 3, 1909; Laws 1909, c. 61, p. 67.]

§ 1811a. Inspection of Cattle Before Their Removal to Another County—Penalty for Transporting Uninspected Animals.

(Section 1.) From and after the passage of this act it shall be the duty of any or all persons, associations or corporations, removing or taking

any cow, ox, bull, stag, heifer, steer or calf from one county to another within the state of Montana by railroad or in any other manner whatsoever for the purpose of selling such stock or of offering the same for sale at any public sale to cause the same to be inspected by state stock inspector as hereinafter provided and no railroad company shall accept any of such animals for shipment unless the shipper shall produce a certificate of their inspection by a state stock inspector as herein required; provided, however, that the provisions of this act shall not apply to stock removed or taken from one county to another for the purpose of pasturing, feeding or changing of range thereof nor to stock so removed or taken for the use of any person, association or corporation in the usual and ordinary conduct of their business nor shall it be required that registered livestock be inspected for brands when the owner or shipper shall present to the transportation company or to the state stock inspector or other proper authority a certificate of registration of such animal or animals, which certificate when so presented shall be taken in lieu of a brand certificate of inspection.

(Section 2.) On receiving notice from any person, association or corporation that he or it desires to remove, ship or take from one county to another within this state any of the classes of animals named in section 1 of this act, it shall be the duty of the stock inspector immediately to inspect the same by carefully noting the brands upon such animals and otherwise describing such animals and to keep a full and complete record of all such inspection in a book to be provided for that purpose by the state board of stock commissioners which description shall contain:

I. The brands of all animals branded and the description of animals not branded.

II. The number of animals inspected for removal.

III. The name of the owner or person removing the same.

IV. The name of the person, corporation or association from which the person removing the same made purchase of such animals.

V. The date of such inspection with the destination to which such animals are to be taken and the means of their transportation.

VI. That none of such animals are afflicted with any infectious or contagious disease.

If in the opinion of the inspector making the inspection the person proposing to remove such stock is rightfully in the possession of the same and that such animals are not infected with disease, he shall grant such person or persons, corporation or association, certificate of inspection containing a statement of the matters herein above required with a further statement that permission is granted to such person to remove such animals from the county. If, however, the officer or officers making such inspection shall be of the opinion that such stock or any portion thereof is stolen or otherwise wrongfully in the possession of the person or persons proposing to remove the same or if such stock or any portion thereof is infected with disease, the inspection certificate and permit to remove shall be withheld until satisfactory evidence is given to the inspector of the rightful possession of such property by the person or persons proposing to remove the same and in case of disease, until the state veterinary surgeon shall have made examination of the animals withheld on account of disease and made written order and direction respecting their disposal. Such certificate of inspection and permit to remove shall be by the holder thereof exhibited to any person or persons demanding to see the same.

(Section 3.) It shall be the duty of the stock inspector immediately upon making the inspection herein required, in case he passes such livestock, to issue the certificate herein provided for, and to immediately transmit a duplicate of such certificate to the state board of stock commissioners, to be by said board held and kept as a permanent record, and in case he refuses to grant such inspection certificate because of question as to the ownership of the property, he shall immediately notify the state board of stock commissioners of his refusal to grant such certificate and his reasons therefor; and, should he refuse to grant a certificate because of his belief that such livestock are infected with disease, the state veterinary surgeon shall be at once notified and requested to make inspection and examination.

(Section 4.) Any person removing or attempting to remove any livestock of the kind named in section 1 of this act, without first having received the certificate of inspection and removal, herein provided for, and any railroad accepting for shipment any such property, without compelling the shipper to first give satisfactory evidence of his having received an inspection and removal certificate as herein provided, and any person refusing to exhibit such certificate upon proper demand, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or shall be punished by both such fine and imprisonment. All fines assessed and collected under the provisions of this act shall be turned into the state treasury, and placed to the credit of the stock detective and inspection fund.

(Section 5.) All acts and parts of acts in conflict herewith are hereby repealed.

(Section 6.) This act shall be in full force and effect from and after its passage and approval. [Approved March 8, 1915; Laws 1915, c. 131, p. 287.]

§ 1815. Public Markets—Record Books of Sales of Livestock.

That, hereafter, any person, firm, corporation or association of individuals desiring to establish, maintain or conduct a market for the sale of horses or other livestock at public auction, or otherwise, shall keep a full and complete record book in which must be recorded the name or names of any person, corporation or association of individuals bringing to the said market, or offering for sale at such market, any horses or other livestock, together with a description thereof as to their kind, and of all brands of every kind thereon. And if requested by the sheriff of the county or a stock inspector, in case question arises respecting the ownership, particular description shall be recorded showing in addition to all the brands, the color and sex of such animals; and, in addition, such record shall clearly show the name of the person for whom such animal or animals were sold, the date of the sale, and the person to whom such animal or animals were sold, and the particular character of the animal or animals. Such record book must be open for inspection by the public for persons interested at any and all reasonable times. [Amendment approved February 16, 1909; Laws 1909, p. 23.]

§ 1840. Quarantine Against Diseases of Livestock.

In all cases of contagious or infectious diseases among domestic animals or Texas cattle in this state, the state veterinarian has authority to

order the quarantine of the infected premises, provided, however, that before quarantine can be ordered against animals, the owner of said animals can if so desired, immediately obtain the option of some licensed veterinarian other than the inspector, making said inspection and if, however, the two are of a different opinion in regard to condition of said stock, then the state veterinarian shall be called to the locality where the case exists to give a decision, which decision shall be final, and if said stock are found to be infected, it shall be the duty of the state veterinarian to order same dipped on or before the expiration of sixty days, and in case such disease becomes epidemic in any locality in this state, and the state veterinarian has ordered the locality quarantined, he, the state veterinarian must immediately notify the Governor, who must thereupon issue his proclamation forbidding any animal of the kind among which such epidemic exists to be transferred from said locality without a certificate from the state veterinarian showing such animal to be healthy. Provided, however, that when such animals are infected with a disease caused by a parasite which is commonly known, and the exhibition of which to the owner or person in charge will furnish practical information to him of the parasite or disease with which the animals are suffering, and it is practical to exhibit a specimen of such parasite, before declaring a quarantine upon any such premises or animals, the state veterinarian shall, on demand, in person, or by a duly authorized inspector, exhibit to the owner or person in charge of such animals a specimen of the parasite with which they are alleged to be infected, under a microscope, or in such other manner as to be plainly visible, for his inspection. The expenses of holding, feeding, and taking care of all animals quarantined under the provisions of this act must be paid by the owner, agent, or person in charge of such animals. [Amendment approved March 14, 1913; Laws 1913, p. 417.]

Editorial Notes.

Power of the states to provide for the inspection and to regulate the importation of animals. 93 Am. St. Rep. 77.

Quarantine of animals, regulations

which the state may enforce concerning. 97 Am. St. Rep. 242.

Validity and construction of statutory regulations as to infected animals. 26 L. R. A. 638.

§§ 1847, 1848. Compensation to Owners of Diseased Animals Which have Been Destroyed.

(Section 1.) The owners of cattle, horses, mules, sheep, asses, goats, ruminants, and swine afflicted with any communicable or contagious disease that shall hereafter be killed, as prescribed by law, shall have recompense therefor as herein provided.

(Section 2.) That said recompense shall be paid, one-half from the funds, by this act appropriated, and one-half from the general funds in the county where said animals are killed.

(Section 3.) When the state veterinarian, or his deputy, or the state livestock board, has deemed it advisable to slaughter such animals as provided by law, the valuation of such animals so ordered to be killed shall be the actual full assessed valuation thereof as shown on the last assessment-roll of the county in which such stock was assessed; but such assessment shall not in any case exceed the actual value of such stock at the time of such assessment, and where such stock does not appear on the last assessment-roll of the county, then its value shall be the minimum value as found on the last assessment-roll for that class of stock of the county

in which such stock is owned. The value of any animal shall not exceed the sum of five hundred dollars, nor shall any compensation be paid for any stock whose owner has intentionally evaded the taxation thereof, nor for any stock that has not been in the state three months prior to the time the disease is discovered; provided, that where an epidemic is declared to exist by the state livestock sanitary board, the value of such stock ascertained as above, may be paid, although such stock has not been in the state for three months prior to such declaration, if it shall appear that the same was shipped into the state without fraud and under certificate of health of a recognized state or federal inspector, and if such payment is authorized by the executive committees of the various stock boards of the state, including the state livestock sanitary board, and approved by the state board of examiners; provided, that in all cases where the federal government compensates the owner of livestock for any portion of the value thereof, such payment as has been made by, or is due from the federal government will be deducted from the payment herein provided.

(Section 4.) Claims against the state and county arising from the slaughter of animals as herein provided, shall be made by filing with the state auditor and also with the board of county commissioners, an affidavit from the owner that the animal has been killed and buried in accordance with law and a certificate by the state veterinarian that such animal or animals were ordered to be slaughtered; together with a certificate from the county assessor of the county where such animals have been assessed. The state auditor shall examine the same and if found correct, he shall issue a warrant on the state treasurer for fifty per cent of the sum named in the return, and the board of county commissioners shall audit and cause to be paid fifty per cent of the sum named in the return, from the general fund of the county in which said animals were killed.

(Section 5.) This act shall not apply to animals that may be killed and found to be healthy, and the law relative to the killing of healthy animals, as now existing, shall prevail and remain in full force and effect, notwithstanding the provisions of this act.

(Section 6.) There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of eight thousand (\$8,000) dollars for the year ending March 1, 1914, and in the sum of six thousand (\$6,000) dollars for the year ending March 1, 1915. [Approved March 10, 1913; Laws 1913, p. 134. Amended March 9, 1915; Laws 1915, c. 140, p. 319.]

§ 1872. Dipping and Quarantining Sheep Temporarily in State.

Any sheep that are shipped or driven into this state, with the intention on the part of the owner of holding them within the state longer than is necessary to feed them in transit, which feeding must be done in the railroad stockyards, corrals, or buildings, must be at once quarantined and dipped under the supervision of the state veterinary surgeon or inspector, at the point of entry or unloading, or as near such point as may be deemed safe by the state veterinary surgeon or inspector in charge, without danger of scattering infection, and when so dipped shall be branded with a red letter "S" on the right side. After said sheep are so dipped and branded, they may be moved to the ranch or range where it is the intention of the owner to keep them, providing they can be moved to such ranch or range within ten days, when they must be dipped a second time; provided, that

any sheep that are shipped into the state of Montana over any railroad with the intention on the part of the owner of holding them within the state longer than is necessary to feed them in transit (which feeding must be done as hereinbefore provided) may be accompanied by a certificate of a federal veterinarian, setting forth that such sheep are clean, are free from scab or other contagious or infectious diseases; that they come from a locality which is free from scab or other contagious or infectious diseases, and that the cars in which they were shipped were properly disinfected and were free from infection by any of such diseases. Sheep accompanied by a certificate of such federal veterinarian shall be inspected at the first unloading point in this state under the direction of the state veterinary surgeon, and when accompanied by such certificate and so inspected and found free from scab or other infectious or contagious disease, such animal need not be dipped as hereinbefore provided, but shall be branded with a red letter "S" on the right side, and then be trailed from their final unloading point under the direction of the state veterinary surgeon to their range, which range shall be owned or occupied previously by the owner of said sheep, and thereupon quarantined for a period of not less than ninety days, and as much longer as is necessary at the discretion of the state veterinary surgeon. Provided: That sheep so shipped into the state shall not be trailed through the state for any distance exceeding fifty miles from the point of unloading at which such trailing begins, without being quarantined and dipped as herein first provided. And provided further: that sheep that have been unloaded in transit outside of the state of Montana, shall not be deemed clean or free from scab or other infectious or contagious disease, and shall be quarantined and dipped as herein first provided. And provided further, that sheep driven into this state (which sheep shall be animals that are habitually grazed in this state, or an adjoining state, and not otherwise), may be accompanied by the certificate of a federal veterinarian, as above provided, shall be inspected at the state line under the direction of the state veterinary surgeon of Montana; and before driving such sheep in this state, the owner or person in charge shall procure from the state veterinary surgeon a permit to drive said sheep over a certain route to their destination; which destination shall not exceed seventy-five miles from the state line. If said sheep are accompanied by such certificate, and, upon inspection, are found to be free from scab or other contagious or infectious disease, they need not be dipped, but shall be branded with a red letter "S" on the right side, and shall then be trailed from the state line, under the direction of the state veterinary surgeon to their range, which range shall be owned or previously occupied by the owner of said sheep, and shall be quarantined on such range for a period of not less than ninety days and as much longer as is necessary, in the judgment of the state veterinary surgeon; otherwise, and in either instance, they shall be quarantined and dipped as herein first provided. And provided further that the state veterinary surgeon may, if in his judgment the circumstances of any particular case, warrant such action on his part, order any sheep shipped or driven into the state to be quarantined and dipped as herein first provided, if, before making such order he shall receive from the executive board of the state board of sheep commissioners, its approval in writing for such action on his part. Provided further: that all rams entering the state of Montana from other states, must be dipped twice at an interval of not exceeding ten days, according to the

rules as laid down by the Montana sheep commission, at or as near the point of entry as is practical; and after the second dipping, such rams may or may not be quarantined, in the discretion of the state veterinary surgeon. [Amendment approved March 18, 1913; Laws 1913, p. 470.]

§ 1881.

If buck sheep are allowed to run at large and cause injury and loss by getting into a band of ewes, the owner of the ewes has a right of action under the statute; but, if he bases his action simply on negligence in permitting the rams to stray away from the herd in which they were kept, he is not entitled to take ad-

vantage of the statute; in each case a different rule as to proof prevails. *Ball Ranch Co. v. Hendrickson*, 50 Mont. 220, 146 Pac. 278.

§ 1883.

Liability for injury caused by allowing rams to escape. See ante, § 1881.

§ 1903a. Districting of State for Tuberculin Test to Cattle.

(Section 1.) The state livestock sanitary board shall on or before April 1, 1911, divide the state of Montana into four districts to be known as district No. 1, No. 2, No. 3, and No. 4, for the purpose of applying the tuberculin test to all dairy cattle within the state of Montana. [Approved March 14, 1911; Laws 1911, c. 146, p. 494.]

§ 1903b. Special Deputy State Veterinary Surgeon.

(Section 2.) The state livestock sanitary board shall on or before April 1, 1911, appoint four special deputy state veterinary surgeons, whose qualifications shall be the same as those now prescribed by law for deputy state veterinary surgeons, whose duty shall consist of applying the tuberculin test to all dairy cattle within the state of Montana, milk from which is used for public consumption, or sold, disposed of, or given away in any manner for the use of the public. Such special deputy state veterinary surgeons shall receive the same compensation as is now prescribed by law for deputy state veterinary surgeon and shall be at all times under the direction and supervision of the state livestock sanitary board and state veterinary surgeon and such special deputy veterinary surgeons may be removed by the state livestock sanitary board at any time. [Approved March 14, 1911; Laws 1911, c. 146, p. 494.]

§ 1903c. Assignment of Deputies to District.

(Section 3.) Each special deputy state veterinary surgeon herein provided for shall be assigned to one of the districts herein contemplated for the purpose of carrying into effect the provisions of this act. [Approved March 14, 1911; Laws 1911, c. 146, p. 494.]

§ 1903d. Measures to be Taken on Discovery of Tuberculosis.

(Section 4.) Whenever tuberculosis is discovered in any bovine animal supplying milk to the public, or any male bovine animal in a herd supplying milk to the public, the owner of such tuberculous animal must either retain such animal or animals in quarantine under such restrictions, rules and regulations as the state livestock sanitary board may direct, or such owner may ship such tuberculous animal or animals within the boundaries of this state under the direction of said board to any abattoir where meat inspection is maintained under the supervision of the United States bureau of animal industry, or where such inspection is maintained by an official inspector of the state; in the event that such animal or animals are

shipped to any abattoir where such meat inspection is maintained and such animal or animals are sold, the owner shall receive the net proceeds of the sale thereof and shall have no further claim against the state on account of such slaughter. In the event that it is impracticable or impossible to ship such tuberculous animals to an abattoir where meat inspection is so maintained, then the animal may be slaughtered by order of the state livestock sanitary board. [Approved March 14, 1911; Laws 1911, c. 146, p. 494.]

§ 1903e. Disposition of Bodies of Animals.

(Section 5.) The carcasses of all animals condemned and slaughtered under the provisions of this act must be buried or burned under the supervision of the deputy state veterinary surgeon making the inspection and test. [Approved March 14, 1911; Laws 1911, c. 146, p. 494.]

§ 1903f. Tuberculin Tests.

(Section 6.) All tuberculin used for making tests under the provisions of this act, shall be of the kind and quality prescribed by the state livestock sanitary board and must whenever possible be obtained from the United States Bureau of Animal Industry, and the manner and method of testing cattle under the provision of this act, shall be in accordance with the rules and regulations prescribed by the said board. [Amendment approved February 9, 1915; Laws 1915, c. 9, p. 12.]

§ 1903g. Appropriations to Carry Out Act.

(Section 7.) There is hereby appropriated out of the general fund for the carrying out of this act [§§ 1903a to 1903g] under the supervision of the state livestock sanitary board and the state board of examiners the sum of twelve thousand (\$12,000) dollars, for the year 1911, and the sum of fifteen thousand (\$15,000) dollars for the year 1912. [Approved March 14, 1911; Laws 1911, c. 146, p. 495.]

BOUNTIES.

§ 1904. Bounties for Wolves, Coyotes, and Mountain Lions.

That there shall be paid from the bounty funds of the state for the killing of wild animals inimical to the stock industry the following bounties: For each grown wolf \$15; for each coyote \$3; for each wolf pup \$3; for for each coyote pup \$3; for each mountain lion \$10. [Amendment approved February 25, 1911; Laws 1911, p. 87.]

§ 1906. Sheriff and Deputies to Act as Bounty Inspectors—Claims for Bounties.

It shall be the duty of the sheriff of any county in this state, and of all under-sheriffs and deputy sheriffs located at the county seat, but not elsewhere, to receive and examine all skins and pelts presented for bounty within their respective counties; the said sheriff shall receive ten cents for each skin examined, said amount to be paid by the owner of the skin. Each sheriff, under-sheriff, and deputy sheriff shall, to prevent fraud, minutely examine each skin presented, and should such examination disclose that the scalp and ears with the skin from the entire head of such animal or animals have not been severed, punched, patched, or in any manner marked, he shall there, in the presence of the person presenting such skin, mark such skin by severing the skin from the head, including the ears, and

and no two punches in the same county to contain the same letter, numbering seal with a number corresponding with the number of bounty certificate issued for the skin or skins contained thereon, together with his letter; all wolf, coyote, pup wolf, and pup coyote heads to be strung on separate wires respectively, and so noted on said certificate the number of heads on said wire. Neither the sheriff, under-sheriff, nor deputy sheriff shall perform any duties under the provisions of this act except at the county seat.

Willfully making a false certificate or written statement in any material portion thereof by any taxpayer as herein provided shall be a felony, punishable the same as the crime of perjury. The sheriff, under-sheriff, or deputy sheriff is not authorized to examine any skin or issue any certificate except on the first ten days of each month; and any examination made or certificate issued on any other day is void. The sheriff shall not later than the 15th of each month render to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate, the kind and number of the skins so presented, as to each and every certificate which he has issued during said month. The county clerk shall upon the receipt of each said certificate file the same in the order in which they are received and safely keep them until the arrival of the skin or skins mentioned in such certificate, properly sealed as hereinbefore provided; and upon the receipt of said skin or skins so sealed he shall call to his assistance either the county treasurer, or in his absence, the clerk of the district court, who, being present, shall both, in order to prevent fraud, minutely examine each scalp strung upon each wire; and should such examination disclose that the scalps as heretofore specified, of such animal or animals, agree with the number and kind of scalps or lower jaw of mountain lion mentioned in the said certificate, the county clerk shall thereupon, in the presence of said treasurer or clerk of the district court, destroy said scalps, without removing same from said wire, by fire; and said county clerk shall then make out and deliver to the person named in said certificate a second certificate showing the same statement of facts as contained in the certificate of the sheriff, under-sheriff, or deputy sheriff, with the additional statement of the examination so made by him, and that he found said scalp to agree with the number and kind mentioned in the certificate of said sheriff, under-sheriff, or deputy sheriff, and so stated therein said certificate. In no case should a bounty certificate be issued by the county clerk for more scalps than are actually received and counted by him; and the county clerk shall receive for each scalp, or mountain lion lower jaw, accounted for by him, the sum of five cents, to be paid quarterly by the treasurer out of the bounty fund. The county clerk shall keep a record in a bound book of all certificates so received and issued, showing the date, and description of the number and kind of hides, and the names of the persons presenting the same, which book shall be an official record. [Amendment approved March 14, 1913; Laws 1913, p. 419.]

§ 1916a. Unpaid Bounty Claims—Registration and Interest.

All claims for bounties which shall have been heretofore presented to the state board of examiners and which have not been paid by the state because of lack of funds available for such purpose shall be by the board immediately registered in a book provided for that purpose, and from and after the date of registration and same shall bear interest at the rate of four (4%) per annum, payable as hereinafter provided.

Unless the bounty claims presented to said board, or now on file with said board, are objectionable because of fraud, noncompliance with law, or other good and sufficient reason appearing to said board, all such claims shall be at once registered.

For the purpose of paying interest upon such claims there is hereby appropriated from the general treasury out of any moneys not otherwise appropriated, four thousand (\$4,000) dollars for the year 1911 and a like amount for the year 1912. [Approved March 9, 1911; Laws 1911, c. 134, p. 377.]

HORTICULTURE.

§ 1917. Creation of State Board of Horticulture.

There is hereby created a state board of horticulture, to consist of seven members, six of whom shall be appointed by the Governor, one from each of the horticultural districts that are hereby created, and the state executive, who shall be an ex-officio member of the board. [Amendment approved March 7, 1911; Laws 1911, p. 309.]

§ 1918. Horticultural Districts.

The state shall be divided into the following horticultural districts: The first district shall comprise the counties of Dawson, Custer, Yellowstone, Sweet Grass, Carbon, Park and Rosebud; the second district shall comprise the counties of Gallatin, Madison, Jefferson, Beaverhead, Silver Bow, Lewis and Clark, Meagher, and Broadwater; the third district shall comprise the counties of Cascade, Fergus, Valley, Chouteau, Teton and Musselshell; the fourth district shall comprise the counties of Missoula, Granite, Powell and Deer Lodge; the fifth district shall comprise the county of Ravalli; and the sixth district shall comprise the counties of Flathead and Lincoln, and the seventh district shall comprise the county of Sanders. [Amendment approved March 7, 1911; Laws 1911, p. 309.]

§ 1919. Qualifications of Members of Board.

The members shall reside in the districts for which they are appointed. They shall be selected with reference to their study of, and practical experience in horticulture, and the industries dependent thereon. They shall hold office for a term of four years, and until their successors are appointed and qualified, provided, however, that two of the board first appointed to be determined by lot shall retire at the expiration of two years. All vacancies in the board shall be filled by appointment of the Governor, and shall be for the unexpired term. [Amendment approved March 7, 1911; Laws 1911, p. 309.]

§ 1920. Meetings of Board of Horticulture.

The board may call together and hold, in conjunction with horticultural societies, public meetings of those interested in horticulture and kindred pursuits, and may publish and distribute such proceedings and discussions as in its judgment may seem proper, provided the sum so expended shall not exceed the sum of three hundred (\$300) dollars per annum. The board shall meet on the third Monday of February and September of each year, and as much oftener as it may deem expedient. [Amendment approved March 7, 1911; Laws 1911, p. 310.]

§ 1921. Location of Office of Board.

The office of the board shall be located at such place as the majority thereof shall determine, and shall be in charge of the state horticulturalist

during the absence of the board. [Amendment approved March 7, 1911; Laws 1911, p. 310.]

§ 1922. Regulations of Board to be Printed and Circulated—Prevention of Diseases.

For the purpose of preventing the spread of contagious disease among fruit and fruit trees, and for the prevention, treatment, cure and extirpation of fruit pests, and diseases of fruit and fruit trees, and for the disinfection of grafts, scions and orchard debris, empty fruit boxes or packages or other suspected material or transportable articles dangerous to orchards, fruit and fruit trees, said board may prescribe regulations for the inspection, disinfection or destruction thereof, which regulation shall be circulated in printed form, by the board, among fruit growers and fruit dealers of the state, and shall be published at least ten days in two newspapers of general circulation in the state and shall be posted in three conspicuous places in each county in the state, one of which shall be at the county courthouse thereof. For further prevention of the spread of diseases dangerous to fruit and fruit trees, it shall be unlawful for any person, or persons, dealer or dealers, to allow or caused to be used a second time any crate, box, barrel, package or wrapping once having contained fruit or nursery stock, except that at the written request of a nurseryman, an inspector may permit boxes or packages having contained nursery stock to be thoroughly fumigated by him, or in his presence, at the expense of the nurseryman, for which said inspector shall give a receipt and duly mark the box or package; otherwise the destruction of the same must be made in its entirety, and that the finding of such crate, box, barrel, package or wrapping in possession of any person or persons, dealer or dealers, other than the consignee, shall be considered prima facie evidence of a violation of this act.

A member of the board or officer thereof is hereby authorized to seize and destroy by burning without breaking such crate, box, barrel, package or wrapping wherever found, and to prosecute said violator or violators. [Amendment approved March 7, 1911; Laws 1911, p. 310.]

§ 1923. Inspectors of Fruit Pests—State Horticulturists.

The said board shall elect from their own number, or appoint from without their number, to hold office at the pleasure of the board, one competent person in each district, to be known and act as inspector of fruit pests. Said inspectors shall be elected with reference to their study, and practical experience in horticulture. It shall be the duty of such inspectors to visit the nurseries, orchards, stores, packing-houses, warehouses, and other places where horticultural products and fruits are kept and handled within their respective districts, and to see that the regulations of the state board of horticulture to prevent the spread of fruit pests and diseases of trees and plants, and the disinfection of fruits, trees, plants, grafts, scions, orchard debris, and empty fruit boxes and other material shall be fully carried out and complied with. Said inspector shall have free access, at all times, to all premises where any trees, plants, fruits or horticultural products or supplies are kept or handled, and shall have full power to enforce the rules and regulations of the state horticultural board, and to order the destruction and disinfection of any or all trees, plants, fruits or horticultural products or supplies found to be infected with any disease as prescribed or designated by said board.

The said board shall appoint one person to be known as the state horticulturalist. [Amendment approved March 7, 1911; Laws 1911, p. 311.]

§ 1923a. Powers and Duties of State Horticulturists—Salary and Expenses.

It shall be the duty of the state horticulturalist to enforce the laws of the state relative to the growing and marketing of fruits, and traffic in nursery stock, the control and destruction of insect pests, fungus and bacterial diseases, the enforcement of the provisions relating to the licensing of firms, persons or corporations engaging in the business of selling or importing fruits, trees, plants, or nursery stock in this state; the collecting and publishing of information and statistics pertaining to horticulture, to keep a correct record of the transactions of the board of horticulture, supervise and direct the horticultural inspection service, and the dissemination of horticultural knowledge, and the performance of such other duties as may be prescribed by law. He shall appoint as many local inspectors as he may deem necessary to conduct the work, as far as the available funds may allow, and such inspectors shall receive such sum per day as the said board of horticulture may agree upon, provided such sum shall, in no case, exceed the sum of five dollars per day, for the time actually employed. If the funds permit he may hold an annual inspectors' institute at least once each year for the purpose of instructing and training the inspectors in their work, giving each inspector a written notice of such meetings at least ten days before the date of such meeting. He shall preside over and formulate the proceedings of the institute, which shall consist of lectures on insect pests and diseases, methods of control of the same and other matters pertaining to the horticultural interests. Inspectors attending these institutes who have reported regularly each month shall be allowed their actual traveling expenses and hotel bills on vouchers indorsed by the state horticulturalist. Inspectors attending these institutes from points where inspection fees are less than twenty-five dollars per year shall be paid from the horticultural fund a sufficient amount to make their fees equivalent to twenty-five dollars per year upon recommendation of the state horticulturalist, providing available funds warrant it. The state horticulturalist may employ one office clerk at a salary not to exceed one thousand dollars per year who shall be continually in the office of said state horticulturalist during office hours. The state horticulturalist shall prescribe the duties of the office clerk who shall hold appointment at the pleasure of the state horticulturalist. The said state horticulturalist shall receive an annual salary of two thousand five hundred dollars payable monthly in the same manner as other state officers; also his expenses when away from his office on official business.

Said state horticulturalist may also expend for stationery and postage, publishing, printing, office and office room rent, the sum not to exceed two thousand dollars per year. Said sum shall be allowed by the state board of examiners, on the presentation of proper vouchers therefor. [New section approved March 7, 1911; Laws 1911, p. 312.]

§ 1924. Nurserymen to Give Notice of Intended Delivery of Uninspected Stock.

It shall be the duty of every person or persons, corporation or corporations who sell or deliver to any person or persons, corporation or corporations, any trees, plants, vines, scions or grafts, not previously inspected

under the provisions of this act, to notify the state horticulturalist whose duty it shall be to notify the inspector of said district wherein such vines, etc., are to be delivered at least five days before said goods are to be delivered, giving the date and nursery, or railroad station where said trees, plants, scions, etc., are to be delivered, together with the name of the party or parties who are to receive the same. It shall be the duty of the inspector receiving said notice, to inspect the said trees, plants, grafts, scions, etc., as soon thereafter as practicable and if the same be found free from any and all diseases and pests, as designated by said state board of horticulture, he shall so certify and attach a certificate of inspection to each lot or bill of trees, grafts, plants, scions, etc., which said certificate must contain a list of the said trees, grafts, scions, vines or plants so inspected. But if any of the trees, grafts, scions, vines or plants so inspected shall be found to be diseased or infested with any of the pests, as described by the said board, then the inspector shall order the disinfection or destruction of said trees, grafts, scions, vines, etc., so diseased or infested, together with all boxes, wrapping or packing pertaining thereto, provided, that when any fruit or nursery stock is condemned by any inspector, said inspector shall notify the owner thereof, who may appeal to the state horticulturalist and from the ruling of the said state horticulturalist to the state board of horticulture whose decision shall be final, and charge and collect the sum of ten dollars (\$10) for the disinfection and inspection of each carload of said nursery stock, and a proportionate sum for less than carload lots as fixed by the board; provided that the state board of horticulture shall have power to designate certain places as quarantine stations, where all nursery stock brought into the state shall be inspected and disinfected; provided, that the provisions of this act shall not apply to any plants known as greenhouse plants and grown under glass. For the inspection of fruit, a fee of two cents a box or package with a maximum fee of five dollars for each separate lot or car shall be charged and collected. The inspectors shall collect such fees and shall not give certificates of inspection until the fees are paid. [Amendment approved March 7, 1911; Laws 1911, p. 313.]

The inspector cannot rightfully refuse to issue a certificate of inspection because of the seller's failure to take out a license, or provide a bond, as provided in

sections 1935 and 1936, post; the failure of the seller to obey the law does not justify the inspector in violating it. *Welch v. Dean*, 49 Mont. 263, 266, 141 Pac. 548.

§ 1925. Refusal to Comply With Rules or Orders of Board of Horticulture.

If any person or persons in charge or control of any nursery, orchard, storeroom, packing-house, or other place where horticultural products or supplies are handled or kept, shall fail or refuse to comply with the rules and regulations of the said state board of horticulture, or shall fail or refuse to disinfect or destroy diseased or infected trees, plants, scions, vines, grafts, shrubs or other horticultural supplies or products, when ordered so to do, by the inspector of such district, he shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than three hundred dollars. [Amendment approved March 7, 1911; Laws 1911, p. 314.]

§ 1926. Duty of Owner of Orchards to Notify Inspector of Infection.

It shall be the duty of every owner or manager of every orchard, nursery, storeroom, packing-house, or other place where horticultural products or supplies are kept or handled, which shall become diseased or infested

with any injurious insect or pest, to immediately upon discovery of the existence of such disease or pest, to notify the inspector of said district of the existence of the same. It shall be the duty of such owner or manager at his own proper expense to comply with and carry out all the instructions of said inspectors for the eradication of any disease or pest. Any person who shall fail or refuse to notify said inspector, as herein provided, or who shall fail or refuse to comply with the instructions of said inspector for the eradication of any disease or pest, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than three hundred dollars. [Amendment approved March 7, 1911; Laws 1911, p. 314.]

§ 1927. Eradication of Pests at Expense of Owner.

If any person or persons, corporation or corporations, shall fail or refuse to forthwith comply with the instructions of said inspector, for the eradication of any disease or pest, said inspector shall proceed forthwith to eradicate such disease or pest and the expense of the same shall become a charge and lien upon the property of such owner. [Amendment approved March 7, 1911; Laws 1911, p. 315.]

§ 1928. Delivery of Nursery Stock Without Inspector's Certificate.

Every person who, for himself or as agent for any other person or persons, corporation or corporations, transportation company or common carrier, shall deliver or turn over to any person or persons, corporation or corporations, any trees, vines, shrubs, nursery stock, scions and grafts, without first having attached the inspector's certificate, as provided in section 1924 of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in a sum not less than twenty-five dollars nor more than three hundred dollars. [Amendment approved March 7, 1911; Laws 1911, p. 315.]

§ 1929. Liability on Account of Retention of Produce for Inspection.

No person or persons, corporation or corporations, shall be liable to any other person or persons, corporation or corporations for any damage to any trees, vines or shrubs, nursery stock, scions or grafts, by reason of the same being held to await the certificate of the inspector as provided in section 1924 of this act. [Amendment approved March 7, 1911; Laws 1911, p. 315.]

§ 1930. Compensation of Inspectors and Members of Board.

The inspectors of fruit pests appointed, or selected by said board, shall receive as compensation for their services such sum as the board may regulate, provided not to exceed five dollars per day for the time actually employed. The members of said board shall receive no compensation for their services, except actual expenses paid out. [Amendment approved March 7, 1911; Laws 1911, p. 315.]

§ 1931. Bills to be Audited by Board of Horticulture.

All bills for expenditures, under this act, shall be audited and passed upon by said board of horticulture, and if found legal and just, shall be allowed, subject to the approval of the state board of examiners, and a warrant shall be drawn therefor upon the auditor of the state of Montana,

who shall draw a warrant upon the state treasurer therefor. [Amendment approved March 7, 1911; Laws 1911, p. 316.]

§ 1932. Reports of Horticulturist to Legislature.

The board shall biennially, in the month of January, report to the legislature a statement of its doings and abstracts of the reports of the inspectors of fruit pests, and of the state horticulturalist. [Amendment approved March 7, 1911; Laws 1911, p. 316.]

§ 1933. Fines and Fees to be Paid into State Treasury.

All sums of moneys collected as fees, and fines for violations of any of the provisions of this act shall be turned into the state treasury for use in defraying the expenses of the board hereby created, and the appropriations hereby made shall be paid out of the fund to the extent of the money therein contained. [Amendment approved March 7, 1911; Laws 1911, p. 316.]

§ 1934. Delivery of Fruit Without Certificate a Misdemeanor.

Every person who for himself, or as agent for any other person or persons, transportation company or common carrier, shall deliver or turn over to any person or persons, corporation or corporations, any fruits without first having attached the inspector's certificate, shall be deemed guilty of a misdemeanor. [Amendment approved March 7, 1911; Laws 1911, p. 316.]

§ 1935. Importation and Sale of Infected Fruit.

It shall be unlawful for any person, firm or corporation to import into this state, sell, barter, or otherwise dispose of, or offer for sale, or have in his possession for the purpose of sale or barter, any fruit which is or has been infested with San Jose scale, or other scale insect pests, or the larvae of the codling moth, and the fact that any fruit bears the mark of any such scale insect, or is worm-eaten by the larvae of the codling moth, shall be deemed conclusive evidence that the fruit is infected within the meaning of this section, and may be condemned and confiscated by any legal horticultural inspector; provided, that nothing in this section shall be construed to prevent the growers of such infected fruit from manufacturing the same into a by-product, or selling and shipping the same to a by-product factory after having first obtained a permit so to do from a horticultural inspector. [Amendment approved March 8, 1915; Laws 1915, p. 221. Prior amendment: Laws 1911, p. 316.]

Effect of noncompliance with section. of the law." *Welch v. Dean*, 49 Mont. See note ante, § 1924. 263, 266, 141 Pac. 548.

This section "is one of the curiosities

§ 1936. Conducting Nursery Business—License.

It shall be unlawful for any person, firm or corporation to engage in, conduct or carry on the business of selling, dealing in, or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock, or to solicit orders for the purchase of nursery stock, without first having obtained from the state board of horticulture and having in force a license to do so, and it shall be unlawful for any person to falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or

dealer in nursery stock. No license shall be issued until the applicant therefor shall have attested to the application for a license furnished upon request by the state board of horticulture, paid the fee, and furnished the bond, as in this act required. The license fee shall be twenty-five dollars per annum for nurserymen and dealers in nursery stock, and all agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's certificates free of charge. All licenses shall be in the name of the person, firm or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by the agent, salesman, or solicitor. All applications for a license must be in the name of the person, firm or corporation to be licensed, also it must show the nursery acreage represented by the applicant, and such other information as is desired by the state board of horticulture. All licenses shall bear the date of issue and shall expire the first day of July next following the date of issue, provided, that all licenses in force at the time of the taking effect of this act shall continue in force during the term for which they were issued, unless sooner revoked, and any holder of such license applying for a license under this act prior to the first day of July next following the expiration of his former license, shall be required to pay therefor only the proportional part of the fee required for the annual license for the remaining portion of the year until the first day of July next following.

Every nurseryman, or dealer in nursery stock, applying for a license under this act shall make, execute, and file with the state board of horticulture a bond running to the state of Montana, in the sum of one thousand dollars, with surety, or sureties to be approved by the state board of horticulture, conditioned for the faithful compliance by the applicant with all of the provisions of this act and the laws of the state of Montana relating to the sale, disposition, delivery, inspection and disinfection of nursery stock grown, dealt in, imported, sold, handled or delivered by him during the term of the license applied for and the term or terms of renewal of the same, and conditioned further that all nursery stock sold or delivered by him during said term shall be true to name, age, and variety as represented, and free from the diseases and pests required to be guarded against by the horticultural laws and regulations of the state of Montana.

Every licensed nurseryman or dealer in nursery stock who shall have complied with the provisions of this act shall be entitled, upon the expiration of his license or any renewal thereof, by the payment of the fee of twenty-five dollars on or before the date of the expiration of his license or any renewal thereof, to have his license renewed for the ensuing year ending July 1st, so long as the bond originally given in compliance with the provisions of this section shall remain in force.

A license may be refused at any time, or revoked when the person, firm or corporation applying therefor has been adjudged bankrupt, insolvent or guilty of fraud or deceit by any court of competent jurisdiction.

The cancellation or revocation of, or the withdrawal of the sureties from any bond filed in accordance with the provisions of this act shall ipso facto work a suspension of the license of the principal of said bond and the license of all agents, salesmen, and solicitors employed by and representing him, until such a time as such principal shall furnish a new bond to be approved by the state board of horticulture.

Upon complaint in writing, verified under oath by the complainant, being made to the state board of horticulture that the holder of any license in this act as provided for has violated or failed to comply with the provisions of this act, or the laws of the state of Montana relating to horticulture, the state horticulturalist, if in his judgment the complaint is justified, may revoke the license of the nurseryman complained of. From the decision of the state horticulturalist an appeal may be taken to the state board of horticulture, provided that said appeal is in writing setting forth clearly and sufficiently the issue in the case, and is accompanied by a cash bond, or its equivalent to defray all expenses of such appeal.

It shall be unlawful for any person to falsely represent or to misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale, or to falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in, or came from a certain nursery or locality when in fact such nursery stock was grown in or came from another location or nursery, or to deceive or defraud any person in the sale of any nursery stock substituting inferior or different varieties or ages from those ordered, or to willfully or intentionally bring into this state, or to offer for sale or distribution within this state, or to ship, sell, or deliver upon any sale any nursery stock that is infected or infested with any disease or insect dangerous to the horticultural interests of the state, and in case of such misrepresentation, false representation, deceit, fraud or substitution, shall be subject to punishment as provided by the statute for misdemeanor, and shall be liable to the person, firm, or corporation damaged or injured thereby, the amount of all damage sustained to be recovered in a civil action in any court of competent jurisdiction, and any person, firm, or corporation suffering damage by reason of having purchased any nursery stock of a licensed nurseryman or dealer in nursery stock delivered within this state or shipped from a point within or without this state of [for] delivery within this state, or by reason of the destruction of such infected or infested nursery stock by or under the direction of any horticultural inspector as in this act provided, or by reason of receiving any nursery stock, which is not true to name, age, variety, or class as represented by the nurseryman, dealer, agent, salesman, or solicitor selling the same or as ordered, shall have recourse against the bond filed by the licensed nurseryman or dealer from whom such stock has been purchased, for all damages sustained, including damages in case of misrepresentation, deceit, fraud, or substitution, which damage may be recovered at the suit of the party injured against the nurseryman or dealer causing the damage and the sureties on such bond in any court of competent jurisdiction, provided no liability shall attach on such bond by reason of nursery stock being untrue to name, age, variety, or class, unless at least five per cent of any variety ordered shall prove untrue to name, age, variety, or class.

It shall be the duty of all nurserymen or dealers in nursery stock, and all salesmen, solicitors and agents therefor to give to every person ordering any nursery stock a duplicate copy of such order which shall show.

- a. The name and location of the nursery where such stock is grown;
- b. The name of the nurseryman from whom ordered and the name of the solicitor, salesman or agent taking such order;
- c. The date of the order when delivery is to be made;
- d. The number, name, age and price of such variety of tree or plant ordered.

In the event of the shipment into this state from any point without this state of any nursery stock by a person, firm or corporation not licensed to do business in this state as in this act provided, it shall be the duty of the purchaser or person receiving such nursery stock to have the same inspected by a horticultural inspector in the same manner as is required upon the delivery of nursery stock sold and delivered by a licensed nurseryman or dealer in nursery stock within this state, and to pay an inspector's fee of ten per cent of the invoice price of such shipment, provided that the minimum fee for such inspection shall be fifty cents and the actual and necessary traveling expenses of the inspector making the inspection. And provided further, that no inspection fees shall be collected in excess of the regular inspection fees, where such stock is shipped to a person, firm or corporation, holding a Montana license, as provided in this act.

Licenses granted under this act shall be for one year, unless revoked for any violation of this act. [Amendment approved March 8, 1915; Laws 1915, p. 222. Prior amendment: Laws 1911, p. 309.]

If it is impossible to procure a license, a party may do business without it; he cannot be denied the right to do business. *Welch v. Dean*, 49 Mont. 263, 266, 141 Pac. 548.

§ 1937. Notice of Intention to Ship Uninspected Nursery Stock.

It shall be the duty of every person, firm or corporation, licensed to do business under this act to notify the state horticulturalist of his intention to ship an invoice of fruit trees, plants or nursery stock not previously inspected under the provisions of this act, from one point to another in this state, or from any point without this state into this state. The said notice shall contain the name and address both of the consignor and consignee and the list of the goods to be shipped, the freight or express office at which the goods are to be delivered, and the name or title of the transportation company from whom the consignee is to receive the goods. Such notice shall be mailed at least five days before the day of shipment. [Amendment approved March 7, 1911; Laws 1911, p. 317.]

§ 1938. Labels on Uninspected Stock.

It shall be the duty of each person or corporation offering to sell, or selling and delivering any nursery stock, fruit trees, plants, vines, scions, cuttings, etc., not previously inspected under the provisions of this act, within the state of Montana, to place on each and every package so sold and delivered, a label or card, containing the name and address of both the consignor and consignee, and the invoice of the stock therein contained. [Amendment approved March 7, 1911; Laws 1911, p. 317.]

§ 1939. Receiving Uninspected Stock Without Notice to Inspector.

Any person or persons who shall receive and accept any nursery stock, fruit trees, plants, vines, scions, cuttings, grafts, etc., that have not been inspected by a duly appointed inspector of the state board of horticulture, and shall use or dispose of said nursery stock, fruit trees, vines, plants, scions, cuttings, grafts, etc., without first notifying the inspector and furnishing him an opportunity to examine, and if necessary fumigate said nursery stock, will be deemed guilty of a misdemeanor and will be subject to fine as further provided in this act. [Amendment approved March 7, 1911; Laws 1911, p. 317.]

§ 1940. Inspection of Nursery Stock Before Packing for Delivery.

All nursery stock, trees, plants, vines and cuttings grown or growing within the state of Montana, used for filling orders, shall, after said stock shall in the manner and at the times designated by the state board of horticulture, and before the same shall have been packed for delivery, be inspected by a duly appointed inspector and shall be disinfected by fumigating or other method, when, in his judgment such is necessary. After such inspection, if it be found that said nursery stock, trees, plants, vines and cuttings are clean and free from insects and fungi pests, he shall issue his certificate to said nurseryman, and said certificate shall entitle him to use said stock, so inspected and disinfected, for filling orders for the next current delivery; and said inspector's certificate shall be furnished to those entitled to them at a price not to exceed forty (40) cents per hundred.

Nurseries shall give to the state horticulturalist five days' notice of the time when said stock shall be ready for inspection under the provisions of this act. [Amendment approved March 7, 1911; Laws 1911, p. 317.]

§ 1941. Violation of Act a Misdemeanor.

Any person or persons, corporation or corporations, transportation companies or common carriers, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor and fined in the sum of not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300). [Amendment approved March 7, 1911; Laws 1911, p. 318.]

§ 1942. Quarantine of Orchard.

The Montana state board of horticulture is hereby authorized and empowered to establish a quarantine over any orchard or place where fruits are grown or kept, that is infested with any injurious disease or insect pest; and said board may establish such rules and regulations governing such quarantine and regulating or restricting the use of such fruits upon the premises or the shipment or disposition of the same as the board may deem necessary to prevent the spreading of such disease or diseases or insect pests.

Any person who shall violate the provisions of this section, or the rules and regulations established by said board of horticulture, or who shall ship or dispose of any diseased or infested fruit, or fruit products in violation of the order of said board of horticulture, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300). [Amendment approved March 7, 1911; Laws 1911, p. 318.]

§ 1943. Payment of Expense of Eradicating Disease from Orchard.

Whenever under the direction or regulations of the Montana state board of horticulture, any money is expended by said board for the purpose of eradicating any disease or insect pest from any orchard or other place where fruits are grown or kept, said board through its representative shall notify the owner of such orchard or premises in writing of the amount so expended. Said notice shall be mailed to the last known address of such owner and if such owner shall fail to pay the amount so expended by said board within thirty days of the time such notice is sent, then and in that event the board shall file a statement verified under oath by its representative, with the county treasurer in the county wherein said money shall

have been expended. Said statement shall set forth the amount so expended together with the correct description of the property on which such money was expended as it appears on the assessment-roll of the county. The county treasurer shall add the amount as set forth in said statement to the taxes upon said property and shall collect the same as provided by the law for the collection of taxes for state and county purposes. [Amendment approved March 7, 1911; Laws 1911, p. 319.]

§ 1944. Disposition of Funds—Repealing Clause.

The county treasurer in any county where any money is collected as provided in section 1943 of this act, shall on or before the first day of February of each year remit the amount to the state horticulturalist, who shall remit the same to the state treasurer and such remittance, together with all other fees and remittances paid into the state treasury by the state board of horticulture, shall be added to the appropriation for the use of the said board in the year in which such remittances are made and all such remittances shall be credited to the fund for the use of the state board of horticulture.

Sections 1920 and 1933 of the Revised Codes of 1907, and all acts and parts of acts in conflict herewith, are hereby repealed. [Amendment approved March 7, 1911; Laws 1911, p. 319.]

§§ 1945-1947.

For matters formerly contained in sections 1945-1947, Revised Codes of 1907, see sections 1917-1944 herein.

§ 1948a. Prevention of Insect Pests and Diseases in Plants, Fruits and Crops.

(Section 1.) Whenever the Governor of the state has good reason to believe that any pest, gypsy moth, brown-tail moth, Mediterranean fruit fly, potato wart, potato canker, black scab, potato ellworm, pea weevil, alfalfa weevil, alfalfa blight, flax canker, or flax wilt or other fruit or plant disease or insect pest dangerous or inimical to the horticultural or the agricultural industry exists in certain localities in another state, territory or country, or that conditions exist that render domestic horticultural stock or agricultural crops or plants likely to become diseased, he must by proclamation designate such localities and prohibit the importation therefrom of any tubers, plants, nursery stock, fruit or seeds or agricultural crops, plants or seeds likely to introduce or spread infection, contagion or insect pests into the state except under such restrictions as he, after consulting with the state board of horticulture, the commissioner of agriculture, or the state entomologist may deem proper.

(Section 2.) Whenever the Governor of this state has good reason to believe that any pest, gypsy moth, brown-tail moth, potato wart, potato canker, black scab, potato ellworm, pea weevil, alfalfa weevil, alfalfa blight, flax canker or flax wilt or other plant disease or insect pest, dangerous or inimical to the agricultural industry, exists within any county or locality within the state, it shall be his duty to prescribe and enforce such rules, and regulations as may be necessary to circumscribe, eradicate or control such pests or disease.

(Section 3.) Any person, firm or corporation who after publication of such proclamation knowingly receives in charge any tubers, plants, nursery

stock, fruit, seeds or agricultural crops, plants or seeds from any of the prohibited districts and transports, conveys, sells or uses the same, within the limits of this state, is guilty of a misdemeanor and punishable by a fine of not less than ten (\$10) dollars or more than five hundred (\$500) dollars, and is further liable for any and all damages and loss that may be sustained by any person by reason of the importation or transportation of such prohibited and diseased tubers, plants, nursery stock, fruits, seeds, or agricultural crops, plants or seeds. [Approved March 8, 1913; Laws 1913, c. 61, p. 117.]

§ 1953.

The amendment of 1909, increasing the number of deputies, was an invalid act; it was not in the form of a bill; had no enacting clause; and had no title; hence, it did not meet the requirements of the

Constitution, and was of no avail as an authoritative expression of the legislative will, though it was passed by both houses and was approved by the Governor. *State v. Cunningham*, 39 Mont. 197, 200, 18 Ann. Cas. 705, 103 Pac. 497.

FISH AND GAME.

§ 1957a. Additional Deputy Fish and Game Wardens.

The state game and fish warden is hereby authorized to appoint in addition to the number of special deputy game and fish wardens now allowed by law six additional special deputy game and fish wardens who shall be deputies at large, and may be assigned by the state game and fish warden to any of the districts of the state as he may deem it necessary to protect the fish and game interests. The salary of each shall not exceed the sum of fifteen hundred (\$1500) dollars per annum and actual necessary traveling expenses not to exceed nine hundred (\$900) dollars per annum, to be paid out of the fish and game fund in the state treasury in the same manner as salaries and expenses are provided to be paid in the laws of Montana relating to the salaries and expenses paid to special deputy game and fish wardens. [Approved March 14, 1913; Laws 1913, c. 96, p. 429.]

Sections 1957a-1957d, and section 1961, all relating to deputy game and fish warden, and enacted at different times, are

perhaps inconsistent, and the earlier provisions perhaps impliedly repealed by the later provisions.

§ 1957b. Special Game and Fish Deputy Wardens.

The state game and fish warden is hereby authorized to appoint, in addition to the special deputy game and fish wardens now allowed by law, such additional deputy game and fish wardens, at such times as he may deem necessary, to protect the fish and game interests of the state, to be removed at his pleasure, at a salary not to exceed one hundred twenty-five (\$125) dollars per month and actual necessary traveling expenses while in the discharge of their duties, not to exceed twenty-five (\$25) dollars per month, to be paid out of the fish and game fund in the state treasury, upon vouchers duly audited by the state board of examiners, and said total sum so paid for such salaries and traveling expenses is not to exceed the sum of twenty-five hundred (\$2500) dollars in any one year. [Approved March 2, 1911; Laws 1911, c. 63, p. 126.]

§ 1957c. Extra Office Clerk for Game and Fish Warden.

The state game and fish warden is hereby authorized to employ an extra office clerk at such times as may be necessary at a salary of seventy-five (\$75) dollars per month, payable monthly out of the fish and game fund in the state treasury, by warrant drawn on said fund by the state auditor in the same manner as for the salaries of special deputy game and

fish wardens; provided that no clerk shall be so employed until authority for so doing is first obtained from the state board of examiners, by the state game and fish warden. [Approved March 2, 1911; Laws 1911, c. 63, p. 127.]

§ 1957d. Chief Deputy Game and Fish Warden.

The state game and fish warden is hereby authorized and empowered to appoint one chief deputy state game and fish warden whose term of office shall be coextensive with that of the state game and fish warden, but such chief deputy so appointed may at any time be removed at the will of said state game and fish warden. Said chief deputy shall perform such duties as are by law prescribed for deputy state game and fish wardens, and such other duties as may be prescribed by the state game and fish warden, and during his absence or inability to act for any reason, shall perform the duties of state game and fish warden.

This act shall not increase the number of deputies now by law allowed the state game and fish warden, which is fifteen, and said chief deputy shall be one of said number. [Approved February 16, 1911; Laws 1911, c. 28, p. 46.]

§ 1959.

See section 1987e, post.

§ 1961. Game and Fish Warden—New Districts and Additional Deputies.

The state game and fish warden is hereby authorized and empowered to create seven (7) additional game and fish districts, and to appoint and employ seven (7) additional special deputy game and fish wardens whose duties and compensation shall be the same as is already provided for by the Revised Codes of Montana of 1907; such appointments may be made by the state game and fish warden any time as in his judgment the needs of the state may require. [Amendment approved March 5, 1909; Laws 1909, p. 118.]

See section 1957a, ante, and note.

The number of deputies the state game and fish warden was allowed to appoint, under section 1953 of the Revised Codes,

was eight, but the law of 1909 increased this number to fifteen. *State v. Cunningham*, 39 Mont. 197, 18 Ann. Cas. 705, 103 Pac. 497.

§ 1968. Salaries and Expenses of Deputies.

The compensation of all special deputy game and fish wardens shall hereafter be at the rate of fifteen hundred (\$1500) dollars per annum, except the chief deputy, whose compensation shall be at the rate of eighteen hundred (\$1800) dollars per annum, payable in monthly installments at the end of each month.

Each special deputy game and fish warden, including the chief deputy, shall be allowed six hundred (\$600) dollars per annum, or as much thereof as may be necessary for his actual and necessary traveling expenses in his own district, when actually engaged in discharging the duties of his office, to be paid out of the game and fish fund upon vouchers duly audited by the state board of examiners. [Amendment approved February 16, 1911; Laws 1911, p. 46.]

§ 1976.

See section 1987a, post.

§ 1977a.

See section 1987a, post.

§ 1978. Compensation for Issuing Hunting or Fishing Licenses.

All persons who are allowed by law to sell or issue hunting and fishing licenses, except the state game warden or his salaried deputies, shall be allowed to collect and to receive and retain as his compensation for issuing the said license, the sum of ten per cent of the amount paid for said license in addition to the sum provided by law for such license, and the said sum of ten per cent shall be retained by such seller of such license and shall be held to be payment in full for any and all services rendered by said person in so issuing said license. Any and all persons who may be empowered to sell and issue hunting or fishing license shall be personally liable to the state of Montana, for any amount of money collected or received for the sale of such license at the face amount thereof, and action may be commenced and prosecuted in the name of the state of Montana to recover same, or at the discretion of the state game warden such person may be prosecuted for embezzlement and punished as provided by law. [Amendment approved March 8, 1915; Laws 1915, p. 239.]

See, also, section 1987a, post.

§ 1978a. Expiration of Hunting and Fishing Licenses.

All hunting and fishing licenses shall expire on the thirtieth day of April, next after their issuance. The provisions of this act shall be construed to apply to all hunting and fishing licenses, including resident citizens' hunting and fishing licenses, nonresident citizens' fishing licenses, general nonresident citizens' hunting and fishing licenses, limited nonresident citizens' hunting and fishing licenses, alien fishing licenses, general alien hunting licenses and limited alien hunting licenses. [Approved February 25, 1913; Laws 1913, c. 31, p. 43.]

§ 1980. Definition of "Game Fish."

Section 1 of the act approved March 13, 1913, be amended so as to read as follows:

That whenever the term "game fish" is used in this act it shall be held and construed to mean the following named varieties of fish, to wit:

Mountain or cut-throat trout (*salme clarkii*).

Eastern brook trout (*salvilinus fontinalis*).

Grayling (*thymallus*).

Rainbow trout (*salmo irrodus*).

Rocky mountain whitefish (*correyonus williamsoni*).

Steelhead trout (*salmo rivularis*).

Dolly Varden trout or char or bull trout (*salvelinus malma*). [Approved March 13, 1913; Laws 1913, c. 79, p. 326. Amended March 8, 1915; Laws 1915, c. 107, p. 235.]

§ 1981. Catching Fish Except With Pole, Line and Hook.

Every person who takes or catches fish in any of the streams, lakes or ponds of this state, except with a pole, line and hooks, or any person who takes or catches fish with a hook baited with any poisonous substance, or by means of dams, or by the use of fish-traps and grab-hooks, seines, or similar means for catching fish, is guilty of a misdemeanor.

It shall be lawful, however, to use a seine of not less than two and a half (2½) inch mesh in the following waters: Ashly Lake, Flathead Lake, Whitefish Lake, Swan Lake, Dicky Lake, Smith Lake, and the Upper and Lower Stillwater Lakes in Flathead county, and Thompson Lake, Loon Lake, McGregor Lake in Lincoln county, and in the Pondera river, and Clark's Fork of the Columbia. All fish so taken by seine, except bull trout, char, or Dolly Varden trout, suckers, German carp, Lake Superior whitefish and squaw fish, shall be returned to the waters from which they are taken, uninjured. Any person desiring to use a net or seine for the purpose of catching fish, not herein designated as "game fish," in any of the lakes, ponds, rivers, or streams above mentioned, shall make application to the state game warden for a license so to do, stating thereon the lake, river, pond or stream in which the applicant wishes to catch fish by use of said net or seine; whereupon the said state game warden may, in his discretion and upon the payment of a license fee of five dollars (\$5), issue to the applicant a license authorizing said applicant to use one seine in any of the rivers, streams, ponds or lakes above mentioned, as applied for. And the state game warden shall issue with each license a metal tag, having a number thereon corresponding with the number of the license issued to said applicant, which shall be, by the license, attached to the seine so used, and shall remain on said seine during the time of use, and it shall be unlawful to use any net or seine unless said tag is attached, as herein provided. Said license shall authorize the person to whom issued to use the same for the purpose of catching and selling, within the limits of the state of Montana for consumption therein, any fish not herein named as "game fish." And the license [licensee] shall make monthly reports of fish caught to the state game warden. The license herein provided for may be issued and remain in force for the term of one year from and after the date of issue, and shall authorize the holder to ship fish to any point within the state, and may, for cause, be revoked at any time by the state game warden.

Said license shall be in substantially the following form:

License to Net Fish, No.

Office of State Game Warden, Helena, Montana.

This will certify that I hereby license of, county of, state of Montana, to take by means of a net, fish from the waters of that certain lake, river, stream or pond known as and called, in county, Montana, for a period of one year; and that when said fish are so taken that the said may ship the same to any point within this state.

This license allows the taking of fish by means of a net having not less than three inch mesh in the waters above named; and that all fish defined by the law of Montana as "game fish" shall be returned to the waters from which taken without injury.

Witness my hand, this day of

.....,

State Game Warden.

The provisions of this section shall be construed to apply to and amend section 8793 of the Revised Codes of Montana of 1907, in so far as it refers to a license for seining in streams mentioned in said section 8793.

Any person violating the provisions of this section, upon conviction, shall be fined in any sum not less than twenty-five dollars (\$25), nor more

than two hundred dollars (\$200), or by imprisonment in the county jail not less than ten (10) days nor more than ninety (90) days, or by both such fine and imprisonment. [Approved March 13, 1913; Laws 1913, c. 79, p. 327.]

See section 8792a, post.

§ 1982. Record of Seining Licenses.

(Section 3.) It shall be the duty of the state game warden to keep a record of all licenses issued by him for the use of a net for the taking of fish, showing the name of the applicant, the date of issue, the waters to be used in, and when revoked (should the same be so revoked), and to pay all fees received for such licenses into the state treasury to the credit of the fish and game fund. Should an application be made for a license by any person who has theretofore had a license revoked for cause, it shall be the duty of the state game warden to refuse the same, and no license shall be issued to any person who has theretofore used any such license, or whose license has been revoked for cause. [Approved March 13, 1913; Laws 1913, c. 79, p. 329.]

§ 1983. Fishing in Private Ponds or Lakes.

(Section 4.) That any person who has or owns a lake or pond, or who owns or controls the land entirely surrounding such lake or pond, may take fish for spawning purposes therefrom to be used in stocking same, and any person who has heretofore, or who shall hereafter cause the said lake or pond to be stocked from year to year and every year for not less than three years with not less than two thousand fry for every acre of the superficial area of such lake or pond, shall have the right and privilege, under the terms and restrictions of law to take from said lake or pond in any manner, except by the use of poisons or explosives the fish contained therein, and to sell and dispose of the same as well as the eggs and fry so taken, provided, however, that any such owner or holder of a lake or pond shall sell or offer to sell at the going market price, to the state of Montana, any eggs or fry, over and above the amount required to restock such lake or pond to the extent required by this section, and provided, that nothing herein contained shall be construed as forbidding the general public from lawfully fishing in, and taking the trout caught from said pond, except that when the land entirely surrounding said pond is owned in fee by the person stocking same, that the law with reference to trespass upon land shall and may be applicable thereto, provided, further, that such owner shall procure a license as herein provided and shall furnish a good and sufficient bond to the state of Montana, in the sum of two hundred dollars (\$200) conditioned to the effect that he will not sell fish caught in any of the public waters of this state, and also conditioned to the effect that such owner or holder will report to the state game warden the quantity of fish, fish eggs and spawn taken from said lake or pond and sold from and planted in said lake or pond during any calendar year. Said report to be made under oath annually in the month of January of each year.

It shall be the duty of the state game warden upon application made, and when satisfied that the person applying therefor is entitled thereto to issue a license in such form as may be adopted by him to any person so entitled under the provisions hereof upon the payment of the sum of five dollars (\$5), the said license to be renewed annually, upon the payment

of a like fee, so long as the person applying therefor shall continue to stock said lake or pond as herein provided. Any license issued hereunder may be revoked by the state game warden at any time should the person to whom the same has been issued be convicted of a violation of the laws of Montana, with reference to the protection of fish and game. [Approved March 13, 1913; Laws 1913, c. 79, p. 330. Amendment approved March 8, 1915; Laws 1915, c. 107, p. 235.]

§ 1984. Limit on Number or Quantity of Fish to be Taken.

(Section 5.) It shall hereafter be unlawful for any one person to catch from the public waters of this state more than twenty-five (25) pounds of any of the varieties of fish designated as game fish (except Dolly Varden trout) in any one day (said weight to be computed after the cleaning of said fish but with the head reckoned in the weight), or more than ten of any such game fish which are less than six inches in length in any one day. It shall be lawful to catch fifty (50) pounds, and no more, of the Dolly Varden variety of game fish in any one day, the weight of the catch to be computed as hereinabove mentioned. It is hereby declared to be the intention of this act to provide that twenty-five (25) pounds of all or any game fish over six inches in length, and ten fish less than six (6) inches in length shall constitute the limit for a day's fishing except in the case of Dolly Varden trout, and that in this variety of fish fifty (50) pounds thereof shall constitute the limit of a day's fishing, and that when the day's catch shall consist of both Dolly Varden trout and other varieties of game fish that twenty-five (25) pounds shall then and in that event constitute the limit for a day's catch.

It shall be unlawful for any one person to be in possession of more than one hundred (100) pounds of Dolly Varden trout, or more than fifty (50) pounds of any other kind of game fish at any one time. Any person violating the provisions of this section upon conviction thereof shall be fined in any sum not less than twenty dollars (\$20) nor more than one hundred dollars (\$100), or by imprisonment in the county jail not less than ten, nor more than thirty (30) days, or by both such fine and imprisonment. [Approved March 13, 1913; Laws 1913, c. 79, p. 331. Amendment approved March 8, 1915; Laws 1915, c. 107, p. 237.]

§ 1985. Deposits of Foreign Substances in or Near Streams or Lakes.

(Section 6.) No person or corporation, operating a sawmill on or near any stream, pond, lake or river, shall hereafter dump, drop, cart or deposit, or cause to be dumped, dropped, carted or deposited, sawdust, bark, shavings, oil, ashes, cinders or debris in or near any such stream, pond, lake or river, or in such a manner or place as will likely result or cause the same to be carried into the waters of any such stream, pond, lake or river; and any person so doing shall be deemed guilty of a misdemeanor, and upon conviction, punished by a fine of not less than fifty dollars (\$50), nor more than five hundred (\$500), or by imprisonment in the county jail not less than thirty (30) days, nor more than six months, or by both such fine and imprisonment. [Approved March 13, 1913; Laws 1913, c. 79, p. 331. Prior Amendment; Laws 1911, c. 90, p. 158.]

§ 1986. Fish or Ladder-way in Streams.

(Section 7.) There shall be constructed at all dams now existing, or any that may be hereafter constructed on any of the streams of the state,

when such is considered necessary by the state game warden, a fishway or ladder to conform to the plans to be furnished by the state game warden. Any person or corporation who shall violate the provisions of this section, shall, upon conviction, be fined not less than two hundred dollars (\$200), nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for a period of not less than thirty (30) days, nor more than ninety (90) days, or by both such fine and imprisonment at the discretion of the court. [Approved March 13, 1913; Laws 1913, c. 79, p. 332.]

§ 1987. Carriers not to Transport Fish Caught in Violation of the Law.

(Section 8.) Any person or persons, or the agent of any stage, express or railway company, or association of persons who shall receive, for transportation or carriage, or shall sell or offer for sale any of the game fish that have been taken or killed contrary to the provisions of this act, knowing or having reason to know or believe that such fish were so illegally caught, taken or killed, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty-five dollars (\$25), nor more than two hundred dollars (\$200), or by imprisonment in the county jail not less than ten (10) days, nor more than thirty (30) days, or by both such fine and imprisonment. Provided, however, that any person having in his possession a fishing license for the current year, may ship not to exceed twenty-five (25) pounds of game fish by express, stage, or freight, upon showing said license to the agent of any carrying company. [Approved March 13, 1913; Laws 1913, c. 79, p. 332.]

§ 1987a. Fishing or Hunting Licenses Required.

(Section 9.) From and after the passing of this act, it shall be unlawful for any person to fish or hunt within Montana, who, by the terms hereof, is required to have a license without first procuring a license of the class required for either hunting or fishing, as the case may be. Licenses for hunting and fishing shall be issued by the authority of the state game warden, and under his hand, from time to time, in the manner herein provided, and in such form as he may adopt.

Licenses shall be divided into the following classes:

Class A. A general hunting and fishing license, as hereinafter described.

Class B. Fishing licenses to those who are not citizens of the United States.

Class C. Hunting and fishing licenses to nonresident citizens, general and limited.

Class D. Hunting and fishing licenses to aliens, general and limited.

No license shall be issued to, nor be required of any female, or of any male under fourteen years of age.

All other persons must procure a license before hunting or fishing within the limits of Montana as follows:

1. A class "A" license may be issued to a person who is a bona fide resident citizen of this state, and who desires to hunt, take, kill, catch and have in his possession any of the fish, game birds and wild animals of this state, except coyotes, wolves and mountain lions, upon the payment of one dollar (\$1):

2. A class "B" license may be issued to a person entitled thereto upon the payment of five dollars (\$5):

3. Any citizen who is a nonresident of the state of Montana, who desires to hunt, take, kill, catch or have in his possession any of the wild animals, game birds and fish of this state, shall procure a license therefor, for which he shall pay the state game and fish warden, or deputy state game and fish warden, the sum of twenty-five dollars (\$25), and such license shall be a general license which shall entitle the holder thereof to hunt large or big game, small and feathered game, and to catch fish from the waters of this state; or the sum of ten dollars (\$10) for a limited license, which shall entitle the holder thereof to hunt small and feathered game and to catch fish.

Nonresident's fishing license: A license to fish in the waters of this state shall be issued to any citizen of the United States not a resident of the state of Montana, upon the payment of a license fee of two (\$2) dollars.

4. Any person who is not a citizen of the United States, and has not declared his intention to become such citizen, who desires to hunt, take, kill, catch or have in his possession any of the wild animals, game birds and fish of this state, shall procure a license therefor for which he shall pay the state game and fish warden, or deputy state game and fish warden the sum of thirty (\$30) dollars, and such license shall be a general license which shall entitle the holder thereof to hunt large or big game, small and feathered game and to catch fish from the waters of this state.

All licenses shall contain a complete description of the licensee, together with his age, business, residence and postoffice address, and shall grant to the owner thereof permission to fish, or hunt and fish, as the case may be, at a time and in a manner not prohibited by law. Every applicant for such license shall, upon applying for the same, state his occupation, residence and postoffice address, and shall place his signature in ink upon such license in a place designated by the officer issuing the same, which signature must be in the presence of such officer. The applicant shall pay the state game and fish warden, or deputy, or the person issuing the license, the sum hereinabove mentioned, and such license, when issued, shall entitle the holder to hunt or fish, or to both hunt and fish, in accordance with the terms of the license held by him.

Any nonresident of this state who shall hunt, take, kill, catch or have in his possession any of the wild animals, game birds or fish of this state, or any part thereof, without having taken out and being at the time in possession of a nonresident's license as provided in this act, and in the case of large or big game, being entitled by virtue of the same to hunt for large or big game, shall be deemed guilty of a misdemeanor, and punished as hereinafter provided for in this section. All citizens of the United States, who have lived in Montana for six months, all officers and soldiers of the United States army, and all students at any institution of learning within the state of Montana, shall be deemed resident citizens for the purpose of this act, as well as all forest rangers and officers of the Forestry Department of the United States.

Any person violating any of the provisions of this section, upon conviction, shall be fined in any sum not less than twenty-five (\$25) dollars, nor more than five hundred (\$500) dollars, or by imprisonment in the county jail not less than thirty (30) days, nor more than ninety (90) days, or by both such fine and imprisonment. [Approved March 13, 1913; Laws 1913, c. 79, p. 332.]

This section seems to repeal section 1977a of the Revised Codes and chapter 38 of Laws of 1913, relating to alien or nonresident gun, hunting, or fishing licenses.

§ 1987b. Application for and Issuance of Licenses.

(Section 10.) Before issuing a license, it shall be the duty of the person issuing the same, to ascertain which class of licenses the applicant is entitled to receive, or desires to purchase, and for that purpose may require of the applicant a written statement in which shall be given all the facts necessary to be known, so that the proper amount may be collected and the proper form of license given to the applicant, and any false statement given, either in writing or otherwise, shall be deemed a misdemeanor and punished as hereinafter provided. Licenses may be issued upon written application to the state game warden, in which shall be stated the name and age of the applicant, his residence, height, weight, color of hair and eyes, occupation and postoffice address, and whether a resident or non-resident, citizen or not, upon the payment of the amount above stated for the class of license applied for. Any person violating any of the provisions of this section, upon conviction, shall be fined in any sum not less than twenty-five (\$25) dollars, nor more than two hundred (\$200) dollars, or by imprisonment in the county jail not less than ten (10) days, nor more than thirty (30) days, or by both such fine and imprisonment. [Approved March 13, 1913; Laws 1913, c. 79, p. 335.]

§ 1987c. Catching Fish for Scientific Purposes.

(Section 11.) It shall hereafter be lawful for the duly accredited representative of any school, college, university or other institution of learning, who may be investigating a scientific subject making the same necessary, to take, kill, capture and have in his possession for such purpose, any of the birds, fish or animals found in this state, and to take, kill and capture the same in any way, except by the explosion of dynamite; provided that no more of any such birds, fish or animals shall be taken than are necessary for such investigation, and provided also that any person who shall desire to engage in such scientific investigation shall apply to the state game warden for a license so to do. If the state game warden is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall place a time limit upon such investigation, and shall place a restriction upon the number of birds, fish or animals to be taken thereunder; and the person to whom such license is issued shall pay therefor the sum of five (\$5) dollars, and shall have no right or authority to take, have or capture any other or greater number of the birds, fish or animals than are mentioned in said license. Any person violating the provisions of this section, upon conviction, shall be fined in any sum not less than twenty-five (\$25) dollars, nor more than two hundred (\$200) dollars, or by imprisonment in the county jail not less than ten (10) days, nor more than thirty (30) days, or by both such fine and imprisonment. [Approved March 13, 1913; Laws 1913, c. 79, p. 335.]

§ 1987d. Receipts for License Fees.

(Section 12.) It shall be unlawful for any person authorized by law to issue hunting or fishing licenses, to issue any temporary receipt, or other evidence of payment of money for a fishing or hunting license to be thereafter issued, and it shall be no defense to any prosecution for fishing or

hunting without a license to make such payment, or to have such receipt; provided that in all cases when a license is applied for by a person entitled thereto to a person authorized to sell the same, and it is not possible, at the time, to deliver the same, such person shall issue an official receipt, which shall be furnished by the state game warden to all persons entitled to issue licenses; said official receipts shall be numbered consecutively, and shall be charged to the account of the justice of the peace, or deputy game warden, to whom licenses are furnished for issuance; and said receipts, when replaced by licenses, shall be returned to the state game and fish warden, or unused receipts and stubs shall be returned at the end of the year to the state game and fish warden to be credited to the account of persons to whom they have been charged. Any person violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars, or by imprisonment in the county jail for not less than ten (10) days, nor more than twenty (20) days, or by both such fine and imprisonment. [Approved March 13, 1913; Laws 1913, c. 79, p. 336.]

§ 1987e. Duty of Officer to Enforce Law.

(Section 13.) It shall be the duty of the state game warden and his deputies, as well as of all peace officers of the state, to discover and make complaint and cause proceedings to be instituted against any and all persons who violate the law with reference to the protection of fish and game in this state, and in all cases no bond for costs shall be required, but all such cases shall be prosecuted by the county attorney of the proper county at the cost of the state. [Approved March 13, 1913; Laws 1913, c. 79, p. 336.]

§ 1987f. Power of Officer to Search Person or Examine Property.

(Section 14.) The game warden, or any deputy, as well as all peace officers, shall have power to search any person and to examine any boat, conveyance, fish basket, game bag, or game coat, or any other receptacle for game or fish, when he has reason to believe that he will thereby secure evidence of a violation of a law. The state game warden, or any of his deputies, shall, at any and all times, have the power and authority to seize and take possession of any and all birds, animals or fish which have been caught, taken or killed at any time in a manner or for a purpose contrary to law, and such search and seizure may be made without warrant. [Approved March 13, 1913; Laws 1913, c. 79, p. 337.]

§ 1987g. Sale of Game After Seizure by Officer.

(Section 15.) All birds, animals, fish, heads, hides, teeth or other parts of any animal seized by any officer as herein provided, shall be sold, under the direction of the state game warden, or his deputies, at a time, place and manner so as to receive the highest price therefor. Such sales shall be made at public auction to the highest and best bidder, and the game warden, or his deputies, shall give notice of the time and place of such sale, together with a description of the bird, or birds, fish, animal, or animals, or parts or portions of animals to be so sold by one publication, at least, in a newspaper of general circulation published in the county where such sale is noticed to be held, and the date of sale shall not be less than

five, nor more than thirty days after the last date of such publication; provided, that in cases where the property seized is perishable, the same may be sold by such officers without publishing a notice thereof, upon such public notice, and under such terms and conditions as, in the discretion of the officers, may seem conducive to secure the full value thereof. [Approved March 13, 1913; Laws 1913, c. 79, p. 337.]

§ 1987h. Certificate of Sale.

(Section 16.) Upon the sale of such property, the officer shall issue a certificate to the party purchasing the same, certifying that the purchaser has the legal right to the possession of the same, and anyone so acquiring said property within the state shall have the right to deal therewith without further question with respect to violation of the law, anything herein contrary notwithstanding. [Approved March 13, 1913; Laws 1913, c. 79, p. 337.]

§ 1987i. Disposition of Proceeds of Sale.

(Section 17.) The money obtained upon the sale of such property shall be paid over to the court before whom the person having the same in possession at the time of seizure is prosecuted, or in which prosecution is pending, and if the person charged with violation of the law is found guilty before said court of violation of the fish and game laws of the state, the money received for the sale of said property shall be paid over to the state treasurer, and be deposited by him to the credit of the fish and game fund; but should it be found that the party from whom the same was taken was not guilty of any violation of the fish and game laws of this state, said money shall be paid to the party from whom said birds, animals, fish, or parts or portions thereof were taken. No officer shall be liable for any damage on account of any search, examination, seizure or sale as herein provided. Where wild animals, game birds or fish are seized as in this act provided, and the person or persons who killed or captured the same cannot be ascertained, then the money so received from the sale of such animals, game birds or fish, shall be paid direct to the state treasurer. The cost of advertising notice of sale, as herein required, shall be paid from the fish and game fund. [Approved March 13, 1913; Laws 1913, c. 79, p. 338.]

§ 1987j. Record of Property Seized or Confiscated.

(Section 18.) It shall be, and is hereby made, the duty of the state game warden, and of every deputy game warden, to make a full and complete record of all property by them, or either of them, confiscated because of a violation of the game and fish laws of this state, showing in detail a description of the property, the person from whom it was confiscated, the price received therefor upon public sale, and the disposition of the money. The state game warden shall keep in his office a permanent record showing all property confiscated by him, or any of his deputies, and the disposition made thereof under the provisions of this act. [Approved March 13, 1913; Laws 1913, c. 79, p. 338.]

§ 1987k. Re-enactment of Prior Laws—Game and Fish Commission.

(Section 19.) That the act approved March 8, 1907, and amended by an act approved February 11, 1911, and the act approved March 4, 1911, all

of said acts relating to the creation of the Montana state fish commission, and prescribing the manner of the appointment of members thereof, and their term of office, be, and the same are hereby re-enacted; and that members of said Montana state fish commission shall continue in office for the term, or respective terms, for which they were respectively appointed, and until their successors may be appointed as herein provided, and shall hereafter be appointed, hold office and have authority to act, and shall be governed as herein provided.

Be it further enacted that from and after the enactment and approval hereof, said Montana game and fish commission shall consist of the state game warden, and four members whose terms of office shall be four years, to be appointed by the Governor, by and with the approval and advice of the Senate; said appointments to be made from time to time as vacancies may occur. [Approved March 13, 1913; Laws 1913, c. 79, p. 338.]

§ 1987l. Qualification and Compensation of Commission.

(Section 20.) Said commission shall qualify in the same manner as members of other state boards, and such commissioners shall receive no compensation, except actual and necessary expenses while engaged in the discharge of their official duties; said actual expenses to be paid by the state treasurer upon presentation to him of itemized bills therefor, duly verified as required by law, out of the fish and game fund. [Approved March 13, 1913; Laws 1913, c. 79, p. 339.]

§ 1987m. Chairman and Secretary of Commission.

(Section 21.) Said commission shall annually elect one of their members as chairman, and one member as secretary, and they shall sign all orders, minutes or documents for the commission. They shall keep a correct record of all business transacted, and shall make a report biennially to the Governor. [Approved March 13, 1913; Laws 1913, c. 79, p. 339.]

§ 1987o. Fish Hatcheries—Location.

(Section 22.) The commission herein provided for is authorized, empowered and directed to secure the sites and plans for, and the construction and equipment of any hatchery authorized by law, and to locate the same at any suitable point within the limits of the state, when authorized so to do by law. [Approved March 13, 1913; Laws 1913, c. 79, p. 339.]

For prior statutes relative to fish hatcheries, see Laws 1911, cc 18, 106, pp. 23, 189; Laws 1913, c. 9, p. 8.

§ 1987p. Fish Hatcheries—Construction.

(Section 23.) It shall be the duty of said commission to procure suitable plans and specifications for any hatchery to be erected under authority of law, and shall cause the same to be built and completed in accordance with such plans and specifications, by contract; said contract to be let after published notice stating the time and place of letting the same, and where plans and specifications may be seen. Said notice shall be published not less than two weeks prior to the time of letting said contract, and said commission, if not satisfied with the bids received, or for any other reason, may reject any and all bids received, and readvertise as often as may be necessary. Any person to whom a contract may be given shall be required to give a good and sufficient bond, conditioned for the faithful perform-

ance and completion of such contract, the same to be approved by the chairman, or some member of the commission. [Approved March 13, 1913; Laws 1913, c. 79, p. 339.]

§ 1987q. Fish Hatcheries—Supervision and Use of Products.

(Section 24.) Said commission shall have general supervision over all hatcheries in the state, and shall appoint and employ a superintendent or director of state hatcheries, who shall act under the control of the state board. The product of all state hatcheries shall be used for the stocking of the lakes and streams of the state, and shall be for free distribution under the direction of said board and the said superintendent or director. [Approved March 13, 1913; Laws 1913, c. 79, p. 340.]

§ 1987r. Powers and Duties of Officers.

(Section 25.) The said superintendent or director, by and with the consent of the board, shall have the power and authority to employ such help as may be necessary in the operation of the state hatcheries, in the gathering of eggs, or the performance of any other work in connection with the propagation and distribution of fish and fry; and said superintendent shall receive for his services the sum of two thousand five hundred dollars (\$2,500) a year, payable monthly, and reasonable traveling expenses, not to exceed six hundred dollars (\$600) in any one year. [Approved March 13, 1913; Laws 1913, c. 79, p. 340.]

§ 1987s. Expenses and Salaries of Officers.

(Section 26.) All expenses of the members of the state board of fish commissioners, while engaged in the work of the state, shall be paid by the state treasurer, upon presentation of sworn account. The salary of the superintendent or director shall be paid without approval, and all other bills and salaries of employees, and expenses incurred in the conduct of the state hatcheries, shall be paid in due course after such bills [have] been examined and approved by said superintendent, and approved and allowed by the state board of examiners. [Approved March 13, 1913; Laws 1913, c. 79, p. 340.]

§ 1987t. Purchase and Selection of Eggs.

(Section 27.) The superintendent shall have power, by and with the consent of the board, to purchase so many eyed eggs from time to time as may be necessary in order to keep the hatcheries of the state supplied with eggs and in full operation; the quantity and kind or species of eggs to be determined by the superintendent; provided, however, that the superintendent shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state to supply said hatcheries, and for the purpose of so doing, shall have the right and authority to build, equip and use fish traps and nets at any and all seasons of the year in all the public waters of the state. [Approved March 13, 1913; Laws 1913, c. 79, p. 341.]

§ 1987u. Fund Arising from Licenses and Fines.

(Section 28.) All moneys collected for licenses and all fines imposed and collected hereunder, shall be paid to the state treasurer, and shall be by him kept in a fund to be known as the state game and fish fund. [Approved March 13, 1913; Laws 1913, c. 79, p. 341.]

§ 1987v. Stations for Taking Fish Eggs.

(Section 29.) The state game and fish warden or the superintendent of state hatcheries is hereby empowered and directed to establish, on the shores of lakes and the banks of streams, at such necessary and suitable places as may be designated by the superintendent of the state hatcheries, stations for the taking of the eggs of all game fish for the use of the state of Montana. In the order of establishing such stations, it shall be the duty of the state game warden to designate in the order the approximate boundaries of the station so established, nor [not] more than one mile in length along the banks of any stream, and not more than one mile along the shores of any lake and shall post notices in conspicuous places on or along said station, warning all persons not to fish in the designated territory for a length of time to be designated within the months hereinafter stated.

The state game warden shall also have authority to issue permits limited in duration to sixty (60) days for the taking of eggs or spawn from fish in any of the public waters of the state whenever such eggs or spawn are so taken for sale to the state of Montana, but it shall be unlawful for any person having or procuring such a permit to sell or dispose of any such eggs or spawn to any person except the state of Montana acting through the superintendent of hatcheries, or the state game warden.

Any person found fishing within the limits of such egg-taking station, shall be deemed guilty of a misdemeanor, and may be immediately arrested by person in charge of the station, or by any citizen, with or without a warrant, and immediately taken before a magistrate for trial and punishment; and such person, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars (\$25), nor more than one hundred dollars (\$100) or by imprisonment in the county jail not less than ten (10) days, nor more than twenty (20) days, or by both such fine and imprisonment, provided, however, that the station for the taking of eggs of eastern brook trout shall only be established or permits issued during the months of October, November, and December of each year, and stations for the taking of eggs of grayling, mountain, rainbow or steelhead trout shall only be established during the months of March, April, May and June of each year. [Approved March 13, 1913; Laws 1913, c. 79, p. 341. Amendment approved March 8, 1915; Laws 1915, c. 107, p. 237.]

§ 1987w. Control of Lakes or Ponds on State Lands.

(Section 29a.) That from and after the passage of this act, the state game and fish commission is hereby given the right and authority to control the waters of any lake or pond which may lie wholly within the limits of land owned by the state of Montana, so far as the use of said lake or pond for the breeding and propagation of game fish is concerned. Before such right to the control of any such lake or pond shall inure to the state game and fish commission, it shall be necessary for the chairman of said commission to notify the state land agent that any such lake or pond is wanted for the purpose herein mentioned giving a description of the said land by legal subdivision when surveyed or a sufficient general description when not so surveyed, whereupon it shall be the duty of the state land agent to make such entry upon his books and maps as may serve as notice to any lessor or purchaser of the right claimed by the state in any such lake or pond, and said state land agent shall notify any lessor or purchaser or applicant to lease or purchase of the fact that a right to the use of such lake or pond is

so claimed, provided, however, that no such right as is hereby given shall continue for more than one year after such land is leased or sold by the state, and provided, further, that should it be found that the right to the control of any such lake or pond theretofore granted lessens the value of said land, or prevents the ready lease or sale thereof, that then and in that event the rights hereby granted to the state fish commission may be terminated upon giving sixty (60) days' notice of such termination to the chairman of the state game and fish commission. [Approved March 13, 1913; Laws 1913, c. 79, p. 341. Amendment approved March 8, 1915; Laws 1915, c. 107, p. 237.]

§ 1987ww. Transportation of Persons or Property at Reduced Rates.

(Section 30.) That nothing in the provisions of Chapter 4 or 5, Title VIII, of the Political Code of the Revised Codes of Montana of 1907, or of Chapter 136 of the Session Laws of the Twelfth Legislative Assembly, or in any of the other provisions of the laws of Montana, shall be construed to prevent, or shall prevent, the carriage or storage or handling of property, by railroads or other common carriers, free or at reduced rates, for the Government of the United States, or of the state of Montana, or for the owner or owners of any fish hatchery within this state, or of any anglers' association, or sportsmen's club organized and existing therein, or of the state fish and game warden, whenever such property is being used for the exclusive purpose of stocking or planting with fish or fish eggs the waters within the state of Montana, or restocking the ranges and forests of the state of Montana with elk, deer, mountain sheep, mountain goats, grouse, ducks or any of the so-called game animals or birds; and nothing therein shall be construed to prevent, or shall prevent, the issuing of free transportation to, or the free carriage of, or the selling of tickets at reduced rates to any and all persons while actually engaged in transporting fish or fish eggs, or stocking or planting the waters of this state with such fish or fish eggs, or to any and all persons while actually engaged in transporting and caring for any of the game animals or birds herein mentioned for restocking the ranges, forests and public parks of this state. [Approved March 13, 1913; Laws 1913, c. 79, p. 342.]

§ 1987x. Repealing Clause.

(Section 32.) All acts and parts of acts in conflict herewith are hereby repealed.

(Section 33.) This act [§§ 1981-1987ww] shall be in full force and effect from and after its passage and approval. [Approved March 13, 1913; Laws 1913, c. 79, p. 343.]

§ 1987xx. Sale of Game—Regulations to be Followed—Merchants, Restaurateurs and Carriers.

(Section 1.) It shall be lawful for any merchant, hotel or restaurant keeper to have in his possession, and to offer for sale, and to sell game and game birds, provided that said game and game birds are not, and have not been killed within the state of Montana.

(Section 2.) It shall be the duty of every person having in his possession and offering for sale any game or game birds, to keep a record showing the amount and kind of game and game birds received by him, together with shipping and transportation receipts showing the true time and place of

shipment of said game and game birds, and the name of the person shipping same, provided, however, that any merchant in Montana selling game or game birds to any hotel or restaurant keeper or other person shall, in addition to the record and receipt heretofore required to be kept by him, keep a record of the date of sale, kind and amount of game or game birds and the name of the purchaser; and provided further, that in the case of hotel and restaurant keepers, or other persons buying game or game birds from a merchant within the state of Montana, a receipt from the said merchant showing the date, amount and kind of game or game birds purchased shall be sufficient evidence of compliance with the provisions of this act by such hotel or restaurant keeper or other person.

(Section 3.) It shall be the duty of every merchant, hotel and restaurant keeper having in his possession and offering for sale any game or game birds, to produce upon demand, for the inspection of any game warden or deputy game warden or sheriff, the receipt or record and shipping and transportation receipts required hereby to be kept by him, and a failure or refusal to produce the same upon demand, coupled with the possession and offering for sale of game or game birds, shall constitute prima facie evidence of the violation of this act.

(Section 4.) Any person who shall have in his possession and offer for sale, or sell any game or game birds without having complied with the provisions of this act relating to the keeping of a record and shipping and transportation receipts, shall be deemed guilty of a felony.

(Section 5.) In the construction of this act the words "game" and "game birds" shall include any and all animals and birds, or parts of the same, the killing of which is restricted or forbidden by the laws of Montana; and the words "merchant," "hotel and restaurant keeper," shall include each and every manager, servant, agent and employee of any such person. [Approved March 15, 1913; Laws 1913, c. 100, p. 436.]

§ 1987y. Creation of Game Preserve—Boundaries—Penalty for Violation of Act.

(Section 1.) That section 1 of Chapter 87 of the Session Laws of the Twelfth Legislative Assembly of the State of Montana be amended so as to read as follows:

"It is hereby unlawful for any person or persons to hunt, kill or pursue any game animal or game bird within the territory as established by the following boundaries, to wit:

"Beginning at a point in the center of the Yellowstone river where the Yellowstone river is intersected by the north boundary line of the Yellowstone National Park; thence down the Yellowstone river in a northerly direction, a distance of eight miles, more or less, to a point in the center of the Yellowstone river directly opposite the mouth of Mol Heron creek; thence due west in a straight line until this projected line intersects the watershed between Mol Heron creek and Tom Miner creek, a distance of six miles, more or less; thence in a general westerly direction following the watershed between Mol Heron creek and Tom Miner creek, Specimen creek and Sheep creek, Tepee creek and Buffalo Horn creek, to a point in the northwest quarter of section twelve, township nine south, range four east, where the county road crosses the Gallatin river, a distance of fifteen miles, more or less; thence in a southeasterly direction along the northeasterly side line of the county road, to a point where said county road, after run-

ning in a southeasterly direction from the point last mentioned, enters the Yellowstone National Park, being a distance of five and one-half miles, more or less; thence north along the west boundary line of the Yellowstone National Park to a point where the west boundary line of said Yellowstone National Park intersects the north boundary line of said Yellowstone National Park, to wit, the northwest corner of said Yellowstone National Park; thence east along the north boundary of said Yellowstone National Park to the point of beginning."

(Section 2.) Any person or persons guilty of a violation of this act shall be fined in any sum not less than twenty-five (\$25) dollars, nor more than two hundred (\$200) dollars. [Approved March 8, 1915; Laws 1915, c. 124, p. 278.]

§ 1987yy. Snow Creek Game Preserve—Boundaries and Regulations.

(Section 1.) For the better protection of antelope, deer and other game animals and birds, the following described area in the state of Montana, counties of Dawson and Valley is hereby set aside and established as the Snow Creek Game Preserve, to wit: Beginning at a point on the north bank of the Missouri river directly across and opposite the point where the divide between Hell creek and Crooked creek intersects the south bank of the Missouri river, thence southerly across the Missouri river and continuing on top of said divide to the top of the main divide between Big Dry creek and the Missouri river, thence westerly on top of said last mentioned divide to the top of the divide between Billy creek and Seven Blackfoot creek, thence northerly on said last named divide to a point on the northern bank of the Missouri river directly across and opposite where said last named divide intersects the south bank of said river, thence easterly along the north bank of the Missouri river following the meanderings thereof to the point of beginning. [Amendment approved March 8, 1915; Laws 1915, p. 263.]

§ 1987yyy. Prior Mountain Game Preserve.

(Section 2.) There is also hereby established an additional game preserve to be known as the Prior Mountain Game Preserve, located in Carbon county, the boundaries of which are as follows, to wit: Beginning at the northwest corner of section twenty-seven (27), township seven (7) south, of range twenty-five (25) east; thence south to the southwest corner of section three (3), township eight (8), south of range twenty-five (25) east; thence east to the southeast corner of section three (3), township eight (8), south of range twenty-five (25) east; thence south to the southwest corner of section eleven (11), township eight (8), south of range twenty-five (25) east; thence east to the southeast corner of section eleven (11), township eight (8), south of range twenty-five (25) east; thence south to the southwest corner of section twenty-four (24), township eight (8) south of range twenty-five (25) east; thence east to the southeast corner of section twenty-four (24), township eight (8) south, of range twenty-five (25) east; thence south to the southeast corner of section twenty-five (25) township eight (8) south of range twenty-five (25) east; thence east to that point which when surveyed will be the southeast corner of section thirty (30), township eight (8) south of range twenty-six (26) east, thence south to that point which when surveyed will be the southwest corner of section thirty-two (32), township eight (8) south of range twenty-six (26), east; thence east to that

point which when surveyed will be the southeast corner of section thirty-six (36), township eight (8) south of range twenty-seven (27) east, thence north of that point which when surveyed will be the southwest corner of thirty-one (31), township seven (7), south of range twenty-eight (28) east, thence east to that point which when surveyed will be the southeast corner of section thirty-one (31) township seven (7), south of range twenty-eight (28) east, thence north to that point which when surveyed will be the northeast corner of section nineteen (19) township seven (7) south of range twenty-eight (28) east, thence west to the northeast corner of section twenty-four (24), township seven (7) south of range twenty-five (25) east, thence south to the southeast corner of section twenty-four (24), township seven (7) south of range twenty-five east, thence west to the northwest corner of section twenty-seven (27) township seven (7) south of range twenty-five (25) east, and place of beginning.

(Section 3.) It shall be unlawful for any person or persons at any time to hunt, trap, kill, capture, or chase any birds or animals of any kind whatever within the limits of the said state game preserve; provided, however, that permits to capture game animals and birds for scientific purposes or for purposes of propagation, and to destroy mountain lions, wolves, foxes, coyotes, wildcats, and mink, may be issued by the state game warden on the payment of a fee of five dollars, and in accordance with such regulations as may be established for said preserve by the warden. In order to carry out the provisions of this act, the state game and fish warden is hereby authorized to appoint two additional deputy state game and fish wardens, one of whom shall have charge of the Snow Creek Game Preserve, and the other of the Pryor Mountain Game Preserve, who shall receive the same compensation as is now allowed deputy state game and fish wardens.

Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), or shall be imprisoned in the county jail for a term of not less than thirty (30) days or more than six months or by both such fine and imprisonment. [Approved March 4, 1911; Laws 1911, c. 100, p. 173.]

§ 1987z. Sun River Game Preserve—Boundaries.

(Section 1.) For the better protection of game animals and birds, the following area in the Lewis and Clarke National Forest, in the Rocky Mountains, state of Montana, is hereby set aside and established as a state game preserve, to be known as the Sun River Game Preserve, to wit:

Beginning at a point on the Continental Divide of the Rocky Mountains due south of the head or source of the South Fork of the North Fork of Sun river, in what will be section 8, township 18 N. of range 10 W., Montana meridian, when surveyed, thence due north from the crest of the Continental Divide to the head of the South Fork of the North Fork of Sun river, thence northerly along and down the course of the South Fork of the North Fork of Sun river, as it winds and turns, to its confluence with the North Fork of the North Fork of Sun river, thence northerly along the course of the North Fork of the North Fork of Sun river as it winds and turns to its head or source, thence due north to the crest of the Continental Divide of the Rocky Mountains, thence along the crest of the Continental Divide of the Rocky Mountains, southwesterly and southerly to the place of beginning, intending hereby to include in said game pre-

serve all that territory lying between the said South Fork of the North Fork and the said North Fork of the North Fork of Sun river on the east, and the Continental Divide of the Rocky Mountains on the west.

(Section 2.) It shall be unlawful for any person at any time to hunt, trap, kill, capture, chase or molest any birds or animals of any kind whatever within the limits of said game preserve, or to discharge any firearms or create any unusual disturbances tending to frighten or drive away any game animals or any birds within said preserve; provided, however, that permits to capture animals and birds for scientific purposes, or for purposes of propagation, and to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink and other predatory animals or birds may be issued by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five (25) dollars, nor more than one hundred (100) dollars, or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment.

(Section 3.) This act shall take effect and be in force from and after its passage and approval. [Approved February 25, 1913; Laws 1913, c. 34, p. 46.]

§ 1987zz. Right of Owner or Lessee to Take and Sell Fish.

(Section 1.) Any person who is the owner, lessee, or who otherwise controls the land surrounding any lake or pond within this state, who shall have established, or who shall hereafter establish and operate and maintain on the shores of said lake or pond a fish hatchery with a capacity for hatching, five hundred thousand (500,000) fish eggs at one hatching and who shall deposit in said lake not less than five hundred thousand spawn or fry annually shall have the right to catch fish within said lake with seine, or hook and line and if they have maintained said fish hatchery for the period of three (3) years, they may sell or offer for sale any fish so caught, within the state of Montana, providing at the time of the selling or offering for sale, they shall continue to maintain said hatchery, and providing further that none of the fish so caught shall be sold or shipped out of the state of Montana nor shall any trout of less than nine inches in length be offered for sale.

(Section 2.) Any person or persons maintaining a fish hatchery the number of spawn or fry deposited in said lake or pond as provided for in section 1 thereof, shall, upon request of the state game and fish warden make a report to him, said reports not to exceed more than two (2) per year, of the number of eggs hatched at said hatchery and of the number of pounds of fish sold by him within the state of Montana.

(Section 3.) Nothing in this act shall be construed as to prohibit any person from catching fish with a hook and line in any such lakes or ponds nor camping upon the lands adjacent thereto.

(Section 4.) Any person or persons who shall violate any of the provisions of this act of selling or shipping or causing to be sold or shipped out of the state of Montana, any fish caught as herein provided, shall be guilty of a misdemeanor and punishable by a fine of not less than twenty-five (\$25) dollars nor more than five hundred (\$500) dollars, or by impris-

onment in the county jail, not more than six (6) months or by both such fine and imprisonment. [Approved March 11, 1909; Laws 1909, c. 142, p. 220.]

§ 2023. [Repealed.]

By act approved March 7, 1911; Laws 1911, c. 120, p. 308.

§ 2029.

Cited in *Kelly v. Independent Pub. Co.*, 45 Mont. 127, 133, Ann. Cas. 1913D, 1063, 38 L. R. A. (N. S.) 1160, 122 Pac. 735.

§ 2030.

Publication of summons is complete, when. See note, post, § 6521.

§ 2045.

Sufficiency of publication of notice of a local option election, and the result of the election. *State v. O'Brien* 35 Mont. 482, 502, 90 Pac. 514.

§ 2048.

Sufficiency of complaint charging one with the unlawful sale of intoxicating liquor under the local option law. *State v. O'Brien*, 35 Mont. 482, 492, 90 Pac. 514.

In a prosecution for an unlawful sale of liquor the defendant may not introduce evidence to impeach the local option election. *State v. O'Brien*, 35 Mont. 482, 500, 90 Pac. 514.

§ 2049.

A defendant, charged with violating the local option law, cannot introduce evidence impeaching the election at which the law was adopted. *State v. O'Brien*, 35 Mont. 482, 500, 90 Pac. 514.

POOR AND INDIGENT.

§ 2054. Care of County Poor—Letting of Contracts by Commissioners.

The board must, at its regular session in September, 1909, and at each regular September session thereafter immediately preceding the expiration of any contract previously made for the care, support and maintenance of the county poor, make an order directing the clerk of the board to publish a notice in a newspaper inviting sealed proposals for the care, support and maintenance of the indigent sick, poor and infirm of the county, per capita, by the week, for a period of not less than one nor more than two years, said proposals to include the entire cost of feeding, clothing and nursing of the indigent sick, poor and infirm, and the burial expenses. The notice must be published in a newspaper printed in the county for four successive weeks, at least once a week. [Amendment approved February 25, 1909; Laws 1909, p. 34.]

The several provisions of the statute relating to county charges are to be construed together. *State v. Hindson*, 44 Mont. 429, 439, 441, 120 Pac. 485.

There is a manifest contradiction of terms in this section, as amended in 1909, but, when read in connection with section 2055, post, as amended in 1911, it was manifestly the intention that bids should be asked for one year only, and that any contract for the care of the county poor should run but one year. *State v. Hindson*, 44 Mont. 429, 441, 120 Pac. 485.

Section 2054, as amended, commands the board of county commissioners every September to advertise for bids for the care of the county poor "for a period of not less than one nor more than two years," and, though there is a seeming contradiction of terms here, the legislative intention is apparent when there is read in this connection the further provision found in section 2055, as amended by Laws of 1911, Chapter 45, page 78. *State ex rel. Stuewe v. Hindson*, 44 Mont. 429, 441, 120 Pac. 485.

§ 2055. Contract for Care of Poor and Infirm.

The proposal must be addressed to the clerk of the board, and the board must annually at their September session award the contract for the care, support and maintenance of the sick, poor and infirm of the county to the lowest responsible bidder for the ensuing year. Provided, however, that in a county owning a county poor farm with suitable buildings of sufficient size to care for the indigent, sick, poor and infirm of such county, the county commissioners of such county may employ some suitable person as superintendent of such poor farm, and the county may maintain the said

indigent, poor, sick and infirm at said farm at the expense of such county. Such superintendent shall at all times be under the control of and subject to the orders of the board of county commissioners, and may be removed by them at any time. [Amendment approved February 23, 1911; Laws 1911, p. 78. Prior amendment: Laws 1909, p. 34.]

Under this section, as amended in 1911, the board must award the contract to the lowest responsible bidder, provided, however, that if the county owns its own poor farm, properly equipped, the commissioners may employ a superintendent and care for the charges themselves. *State v. Hindson*, 44 Mont. 429, 439, 120 Pac. 485.

The board having the power, under section 2057, post, to reject bids, it is not its absolute duty to accept the lowest responsible bid; hence, mandamus does not lie, either at the suit of an unsuccessful bidder or a taxpayer, to coerce the board into letting a contract to the lowest responsible bidder. *State v. Hindson*, 44 Mont. 429, 440, 120 Pac. 485.

The letting of contracts to the lowest bidder is for the benefit of the public; the provision requiring it does not confer any right upon the lowest bidder as such; but an unsuccessful bidder may, as a taxpayer, invoke the aid of a court, by mandamus, to compel action by the board, where it has failed to act; that is, it may be compelled to exercise its discretion in the matter, but the particular conclusion which the board should reach, after such discretion has been honestly exercised,

cannot be directed. *State v. Hindson*, 44 Mont. 429, 440, 120 Pac. 485.

In advertising for bids for two years, and in assuming to let a contract to the highest bidder, the board exceeds its authority. *State v. Hindson*, 44 Mont. 429, 441, 120 Pac. 485.

A contract fraudulently let is a nullity. *State v. Hindson*, 44 Mont. 429, 441, 120 Pac. 485.

This section provides that the board of county commissioners must award the contract, for the care of the poor, sick and infirm of the county, to the lowest responsible bidder; provided, however, that, if the county owns its own poor farm, properly equipped, the commissioners may employ a superintendent and care for the charges themselves. *State ex rel. Stuewe v. Hindson*, 44 Mont. 429, 439, 120 Pac. 485.

§ 2057.

Compelling award of contract. See note ante, § 2055.

The authority of the board to reject all bids is necessarily implied; and, if the situation warrants it, the board may re-advertise. *State v. Hindson*, 44 Mont. 429, 440, 120 Pac. 485.

§ 2065. Burial of Soldiers, Sailors and Marines.

It shall be the duty of the board of county commissioners of each county in this state, to designate some proper person in the county, whose duty it shall be to cause to be decently interred, the body of any honorably discharged soldier, sailor or marine, who shall have served in the army or navy of the United States, who may hereafter die. Such burial shall not be made in any burial grounds or cemetery, or in any portion of such burial grounds or cemetery, used exclusively for the burial of pauper dead. Provided, the expense of each burial shall not exceed the sum of one hundred (\$100) dollars. [Amendment approved March 6, 1911; Laws 1911, p. 196. Prior amendment: Laws 1909, p. 119.]

§ 2067. Duty of Persons Appointed to Make Interment.

It shall be the duty of the person appointed as provided in section 1 of this act [§ 2065 herein] to cause such deceased person to be buried as provided in this act, and he shall immediately report his action to the clerk of the board of county commissioners, setting forth all the facts, together with the name, rank or command, so far as is known, to which the deceased belonged, as such soldier, sailor or marine. The date of death, place of burial, and his occupation while living, and also an itemized statement of the expenses incurred by reason of such burial. [Amendment approved March 6, 1911; Laws 1911, p. 196.]

§ 2081. Fire Protection.

The board of county commissioners are authorized to establish the fire limits in any unincorporated town or village, and at the time of the annual levy of taxes, may levy a special tax upon all the property within such limits for the purpose of buying apparatus and maintaining the fire department of any such town or village, and such tax must be collected as are other taxes. All moneys so collected by the county treasurer shall be disbursed by him upon warrants signed by the treasurer of the fire company and countersigned by its foreman. In the drawing of such warrants against the funds so collected by the county treasurer, the foreman and treasurer of the fire company shall be governed by the by-laws of such fire company. It is provided that the provisions of this section shall not apply to payment of bonds and interest thereon as provided by Chapter 107 of the Laws of the Twelfth Legislative Assembly of the State of Montana. [Amendment approved February 18, 1915; Laws 1915, p. 27.]

§ 2082. Requirements of Legal Fence.

Any one of the following, if not less than forty-four inches or more than forty-eight inches in height, shall be a legal fence in the state of Montana:

(1.) All fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which must not be less than fifteen inches nor more than eighteen inches from the ground, securely fastened as nearly equidistant as possible to substantial posts, firmly set in the ground, or to well-supported leaning posts not exceeding twenty feet apart or thirty-three feet apart where two or more stays or pickets are used equidistant between posts; provided, that all corral fences used exclusively for the purpose of inclosing stacks which are situated outside of any lawful inclosure shall not be less than sixteen feet from such stack so inclosed, and shall be substantially built with posts not more than eight feet distant from each other and not less than five strands of well-stretched barb-wire, and shall not be less than five nor more than six feet high; provided further, that any kind of a fence equally as effectual for the purpose of a corral fence may be made in lieu thereof.

(2.) All fences constructed of any standard woven wire not less than twenty-eight inches in height securely fastened to substantial posts not more than thirty feet apart shall be a legal fence, provided one barbed wire shall be placed above the same at a height of not less than forty-eight inches from the ground.

(3.) All other fences made of barb-wires which shall be as strong and as well calculated to protect inclosures as those above described, shall be considered legal fences.

(4.) All other fences consisting of four boards, rails or poles with posts not over fourteen feet apart.

(5.) All rivers, hedges, mountain ridges and bluffs or other barrier over or through which it is impossible for stock to pass. [Amendment approved March 8, 1913; Laws 1913, p. 127.]

Provisions not applicable to animals in charge of a herder. See note, post, § 2090.

Liability for herding or driving animals upon another's land. See note, post, §§ 2090 and 8474.

§ 2090.

Liability for herding or driving stock upon another's land. See note, post, § 8474.

The provisions of this section apply to all domestic animals, except those enumerated in § 8836, post, which the owner must keep within his own inclosures, under the common law rule; but such provisions have no application to animals in charge of a herder. *Herrin v. Sieben*, 46 Mont. 226, 232, 127 Pac. 323.

An owner of sheep has no right to willfully and unlawfully drive them upon the lands of another, whether such lands are inclosed or not; the owner, in such a case, to avoid encroaching upon his neighbor, must, at his peril, ascertain the

line at which his rights end and his neighbor's begin. *Herrin v. Sieben*, 46 Mont. 226, 233, 127 Pac. 323.

Editorial Notes.

Duty to fence against animals in highways. 8 Am. Dec. 125.

Liability for trespasses of animals. 49 Am. Dec. 248; 28 Am. Rep. 569; 22 L. R. A. 55.

§ 2091.

Jurisdiction of justice's court. See note, post, § 6286.

AGRICULTURAL STATISTICS.

§ 2098. Statistics to be Prepared by Commissioner of Agriculture.

The commissioner of agriculture and publicity must annually prepare from official reports and from other reliable sources to which he may obtain access, as full tables of the statistics of the state as may be in his power, and report the result of his labor to the Governor. [Amendment approved March 8, 1915; Laws 1915, p. 289.]

§ 2099. Officers to Answer Questions.

In order to insure a more perfect collection of the statistical information contemplated by this chapter, every officer within this state must answer fully and promptly the special and general questions the commissioner of agriculture and publicity may propound in carrying out the objects mentioned in this chapter, and no person must receive any compensation for answering such questions. [Amendment approved March 8, 1915; Laws 1915, p. 290.]

§ 2101. Duties of Various Officers.

The county assessor must make return of all blanks containing statistical information, together with a full abstract of the same, to the commissioner of agriculture and publicity on the first Monday of November annually; and the commissioner of agriculture and publicity is hereby required to cause to be printed all the necessary blanks to enable the assessors to carry into effect the provisions of this chapter, and to furnish the same to the assessor. [Amendment approved March 8, 1915; Laws 1915, p. 290.]

PUBLIC LANDS.

§§ 2152-2308.

The subject matter of these sections is covered, at least in part, by the chapter on State Lands, post.

§ 2161.

Under this section and section 2162,

post, the state board of land commissioners have a discretion as to the selling or leasing of state lands, which cannot be controlled by a writ of mandamus under section 7214, post. *State v. Stewart*, 50 Mont. 404, 147 Pac. 276.

§ 2196. Investment of Permanent School and University Fund.

All moneys belonging to the permanent school and permanent university fund must be invested:

First. In bonds of the state of Montana or of the United States.

Second. In interest-bearing warrants upon the general fund of the state.

Third. In such bonds of the several counties and cities of the state as the board deems most safe and secure.

Fourth. In bonds of school districts within the state of Montana, provided, that before any such moneys are so invested, the board must be

satisfied that the outstanding indebtedness of such district, does not exceed three per cent upon the valuation of the property within it.

Fifth. In any state capitol building bonds of the state of Montana, now issued, or which may be hereafter issued.

Sixth. Bonds of any irrigation district organized under the laws of the state of Montana.

Seventh. In first mortgages on farm lands in the state, not exceeding in amount one-third ($\frac{1}{3}$) of the actual value of any subdivision on which the same may be loaned, such value to be determined by the state board of land commissioners, who may appoint appraisers for said purpose, as in case of appraisements of state lands. The said first mortgages on farm lands, and each of them shall run for a period of not exceeding ten (10) years and the funds so invested shall draw interest at the rate of six per cent (6%) per annum, said interest together with ten per centum of the whole amount of the principal shall be paid in annual installments, and the interest when paid shall be converted into and become a part of the funds of such institution.

Such first mortgage loans shall only be made upon cultivated lands within the state, the title to which has been adjudicated as in the owner of said lands, and to persons who are actual residents thereof, and in no case on lands of which the appraised value is less than ten (\$10) dollars an acre. Any and all of said mortgages which run for a greater period than five (5) years may be satisfied at any time after five years from date thereof, upon the payment of the full amount due. The applicant for the loan upon any farm land shall furnish a complete and satisfactory abstract, at his own expense of the title of the land, and before any loan is made the Attorney General of Montana shall examine said title, and if he shall find title resting in said applicant, he shall certify the same to the state board of land commissioners. The cost of appraising such loan shall be estimated by the board and the amount of said estimate paid by the applicant to the state board in advance of and before any appraisalment of such land shall be made. [Amendment approved March 18, 1913; Laws 1913, p. 468.]

§ 2197. Duty of Board of Land Commissioners to Keep Funds Invested.

The state board of land commissioners is hereby authorized and required to invest and keep invested all moneys belonging to the permanent school fund and permanent agricultural college fund in any state, county, city, school district or irrigation district securities in this state, or in any state capitol building bonds now issued or which may be hereafter issued, and in such first mortgages on farm lands in the state as provided in, and in the manner set forth in subsection 7, of section 2196 herein, which in the judgment of the board are safe investments.

The board may make its bids for any of said securities in the same manner as private persons and under no restriction other than those imposed upon private persons seeking investment herein. [Amendment approved March 18, 1913; Laws 1913, p. 469.]

§ 2199. Officers in Charge of Bond Sales to Give Notice to Board.

It shall be mandatory upon the officers in charge of county, city, school district and irrigation district bond sales to give the state board of land commissioners, at least thirty days prior to the date of such sales, a copy of the advertisement thereof, also full and complete proof of the proceedings had

with reference to the issuance of said bonds, with the opinion of the county attorney as to the legality thereof, together with a certificate showing the amount of taxable property in and the amount of indebtedness against such county, city, school or irrigation district and upon request shall furnish such other information as said board may require, and any failure to comply herewith shall be deemed a misdemeanor punishable by a fine of not less than one hundred (\$100) dollars or more than one thousand (\$1,000) dollars, and the county attorney of the proper county, upon request of the state board of land commissioners, must prosecute any officer for violating this section. [Amendment approved February 15, 1913; Laws 1913, p. 24.]

§ 2240. Directors of Carey Land Act Board.

Said Carey land act board shall consist of the Governor, Secretary of State, and Attorney General, none of whom shall receive additional compensation for services on said board. [Amendment approved March 8, 1911; Laws 1911, p. 351.]

§ 2241. Expenses of Officers.

The traveling expenses necessarily incurred in the performance of his duties as a member of the board, by any member of the board, or by the secretary or assistant secretary of the board, and the necessary office expenses of the board shall be paid by the state, on sworn statements of account, approved by the state board of examiners. [Amendment approved March 8, 1911; Laws 1911, p. 351.]

§ 2242. Governor as Chairman of Board—Meeting.

The Governor shall be chairman of the Carey land act board, and shall sign all contracts made by it. Said board shall meet at the office of said board at the state capitol building, at such times as the Governor may designate or when called by him. [Amendment approved March 8, 1911; Laws 1911, p. 351.]

§ 2244. State Engineer—Duties—Reports.

The state engineer shall:

(1.) Act as secretary of the Carey land act board, and perform such duties as are imposed upon him by law governing that board, giving special attention to the projects already commenced by the state arid land grant commission.

(2.) With the approval of the state board of land commissioners, he shall examine or cause to be examined, tracts, of land belonging to the state or to state institutions, and ascertain how much of same it is practicable to irrigate and report to said land commissioners detailed description of any such lands as can be irrigated, the probable cost of an irrigation system for same; and when directed so to do by said commissioners shall prepare plans and specifications for any such irrigation system.

(3.) The state engineer shall become conversant with the waterways of the state and the needs of the state as to irrigation matters, shall make or cause to be made, measurements and calculations of the ordinary and flood discharge of streams co-operating in this work as much as possible with the United States Geological Survey and the Montana Experiment Station; such measurements to be made on streams in order of their importance, provided that measurements already made, if deemed reliable, may be adopted.

(4.) The state engineer shall keep in his office full and proper records of his work, observations and calculations, all of which shall be property of the state.

(5.) The state engineer shall prepare and render to the Governor, biennially, and oftener if required, full and true reports of his work and such suggestions as to laws and amendments as he deems best. [Amendment approved March 8, 1911; Laws 1911, p. 351. Prior amendment: Laws 1909, p. 52.]

§ 2246. Salary and Report of State Engineer.

The state engineer shall receive a salary of three thousand (\$3,000) dollars per annum, payable monthly. He shall report to the Carey land act board, at the end of each fiscal year, the time he has spent in connection with Carey land work, and the said board shall reimburse the general fund out of any money available in the Carey fund for the salary of the state engineer for such time as he has spent on Carey land work. [Amendment approved March 17, 1913; Laws 1913, p. 463.]

§ 2248. Assistant Secretary.

Said Carey land act board may, if in its judgment necessary, have and appoint an assistant secretary, who shall keep a proper record of its transactions, keep its accounts, have charge of funds paid to it, of its correspondence and documents, countersign papers and instruments, and perform such duties as the board may require. He shall have authority to administer oaths whenever necessary in the performance of his duties as assistant secretary. He shall give a bond for the faithful performance of his duties in an amount to be fixed by the board. [Amendment approved March 8, 1911; Laws 1911, p. 352.]

§ 2249. Salary of Assistant Secretary.

The assistant secretary's salary shall be fixed by the board in proportion to services performed, provided the sum shall not exceed one hundred and fifty (\$150) dollars per month. [Amendment approved March 8, 1911; Laws 1911, p. 352.]

§ 2270. [Repealed.]

By act approved March 8, 1909; Laws 1909, c. 111, p. 159.

§ 2283.

The rights of all persons to enter upon and make exploration of the public mineral lands, for the purpose of making locations, are equal; but the one who first makes a discovery has the exclusive right, during the time allowed him, to make the first location. *Ferris v. McNally*, 45 Mont. 20, 27, 121 Pac. 889.

The locator must do his exploration work, within sixty days after posting his notice, by sinking the discovery shaft, as provided herein. *Ferris v. McNally*, 45 Mont. 20, 25, 121 Pac. 889.

By discovery and the posting of notice of claim, the discoverer acquires a right to make a location to the exclusion of

one who thereafter enters and makes a location, pending the time allowed by the statute to complete the marking of the boundaries and the required excavation work. *Ferris v. McNally*, 45 Mont. 20, 26, 121 Pac. 889.

The location of a quartz lode is not valid unless there has been a discovery and a compliance with the requirements of this section. *Ferris v. McNally*, 45 Mont. 20, 25, 121 Pac. 889.

The state may rightly exact of a locator certain things enumerated in the code, in addition to what is required by the laws of the United States, for making a quartz lode mining location. *Butte etc. Min. Co. v. Barker*, 35 Mont. 327, 341, 89 Pac. 302.

While the code does not in express terms declare that the opening of the cut, crosscut, or tunnel, which is designated the equivalent of the discovery shaft,

must be on the claim sought to be located, still no other conclusion can be drawn from the language employed in sections 3611 and 3612 of the Political Code. Butte etc. Min. Co. v. Barker, 35 Mont. 327, 341, 89 Pac. 302.

Editorial Notes.

Determination of mineral or non-mineral character of public land. Ann. Cas. 1912A, 1302.

Discovery of mineral in mining claim and rights of locator prior thereto. 139 Am. St. Rep. 154.

§ 2284.

The doing of development work and the filing for record of the declaratory statement, in the case of a quartz claim, are purely statutory requirements which the state may rightfully exact in addition to the acts required by the federal statutes. Butte etc. Min. Co. v. Barker, 35 Mont. 327, 333, 89 Pac. 302.

§ 2286.

Editorial Notes.

Abandonment and forfeiture of mining claims. 87 Am. St. Rep. 403.

§ 2292a. Validity of Prior Mining Locations.

All placer mining locations or locations of valuable mineral deposits which have heretofore been recorded in the office of the county clerk or recorder have the same force and effect as though such records had been authorized by law, except in cases where the rights of third persons had been acquired before the passage of this code; and such record is entitled to be admitted in evidence in any court.

This is section 3613 of the Political Code of 1895, which was inadvertently omitted from the Revised Codes of 1907.

§ 2293.

A defendant in ejectment, who has made no attempt to show title in himself to the portion of a mining claim in dispute, by location or any other method

provided for by the federal statute, is not in a position to take advantage of an alleged defect in a declaratory statement. Consolidated etc. Min. Co. v. Struthers, 41 Mont. 565, 575, 111 Pac. 152.

§ 2296a. Annual Work on Mining Claim—Filing of Affidavit.

The owner of a lode or placer claim who performs or causes to be performed the annual work or makes the improvements required by the laws of the United States in order to prevent the forfeiture of the claim, may, within twenty days after the annual work, file in the office of the county clerk of the county in which such claim is situated, an affidavit of his own, or an affidavit of the person who performed such work or made the improvements, showing:

1. The name of the mining claim and where situated.
2. The number of days' work done, and the character and value of the improvements placed thereon.
3. The date of performing such work and of making the improvements.
4. At whose instance the work was done or the improvements made.
5. The actual amount paid for work and improvements, by whom paid when the same was not done by the owner.

Such affidavits, or a certified copy thereof, are prima facie evidence of the facts therein stated.

This is section 3614 of the Political Code of 1895, which was inadvertently omitted from the Revised Codes of 1907.

§ 2296b. Official Survey of Mining Claim and Certificate Thereof.

Where a locator or owner of a mining claim has the boundaries and corners of his claim established by a United States deputy mineral surveyor and his claim connected with a corner of the public or minor surveys or an established initial point, and incorporates into the declaratory statement

the field-notes of such survey, and attaches to and files with such declaratory statement, a certificate by the surveyor setting forth:

1. That said survey was actually made by him, giving the date thereof.
2. The name of the claim surveyed and the locators thereof.

3. That the description incorporated in the declaratory statement is sufficient to identify the claim.

Such survey and certificate becomes a part of the declaratory statement and such declaratory statement is prima facie evidence of the facts therein contained. The provisions of this chapter apply only to locations made after this code takes effect.

This is section 3616 of the Political Code of 1895, which was inadvertently omitted from the Revised Codes of 1907.

IRRIGATION DISTRICTS.

§ 2309. Who may Organize.

(Section 1.) A majority in number of the holders of title or evidence of title to lands susceptible of irrigation from the same general source, and by the same general system of works, such holders of title or evidence of title, also representing a majority in acreage of said lands, may propose the establishment and organization of an irrigation district under the provisions of this act. The county assessment-roll or rolls for the year last preceding, or the certificate of the county clerk and recorder, or the certificate of the register of the state land office, shall be sufficient evidence of title for the purpose of this act. Where lands have been purchased from the state and part or all of the purchase money has been paid but the patents or deeds from the state to such lands have not been issued, the receipt or receipts held by the purchasers, or the certificate of the register of the state land office showing the payments on account of purchase, shall be evidence of title to such lands, under this act. Provided, however, that lands already under irrigation or lands having water rights appurtenant thereto, or lands that can be irrigated from sources more feasible than the district system, shall not be included unless the owner or owners thereof shall file their consent in writing to the inclusion of such lands in the proposed district, as hereinafter provided. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

This act provides for the creation, organization, government and extension of irrigation districts and for the repeal, with certain reservations, the provisions of sections 2309 to 2402, both inclusive, of the Revised Codes. *Billings Sugar Co. v. Fish*, 40 Mont. 256, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973, 106 Pac. 565.

The power to create an irrigation district is lodged with the district court, as is also supervisory control to some extent over its affairs, but the court must first acquire jurisdiction of the subject matter and of the parties. The act provides for the obtaining of this jurisdiction; this obtained, then the provisions of the act and the rules of procedure are to be given the most liberal construction, to the end that the purpose of the act may be carried into effect. In *re Gallatin Irrigation District*, 48 Mont. 605, 607 et seq., 140 Pac. 92.

In this act, "to provide for the creation,

etc., of irrigation districts," there is no delegation of legislative functions, the legislation being complete in itself; and in enacting it the legislature prescribed the conditions which must be complied with in order to effect the organization of the enterprise, and has declared that, when this compliance has been ascertained by the procedure prescribed for that purpose, the corporation is organized with the powers described in the act. *O'Neill v. Yellowstone Irr. Dist.*, 44 Mont. 492, 501, 121 Pac. 283.

Sections 2303-2402, both inclusive, were, with certain reservations, repealed by the act of 1909. *Billings Sugar Co. v. Fish*, 40 Mont. 256, 272, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973, 106 Pac. 565.

Editorial Notes.

Petitioner for organization of irrigation district as "freeholder." Ann. Cas. 1913D, 335.

§ 2310. Petition for Organization.

(Section 2.) For the purpose of establishing and organizing an irrigation district hereunder, a petition signed by the required number of holders of title or evidence of title to lands within such proposed district mentioned in section 1 of this act [§ 2309 herein], shall be filed with the clerk of the district court of the county in which the lands of the proposed district, or the greater portion thereof, are situated. Provided if there are three or more counties embraced in the proposed district, and no one county embraces the greater portion of said lands, then and in that event said petition shall be filed in the county which embraces a greater portion of said lands than any one of the other counties embraced in said proposed district. Such petition shall set forth:

(1) The name suggested for the proposed district.

(2) A general description of the lands to be included in the proposed district.

(3) The name of the holders of title, or evidence of title to the lands in the proposed district, ascertained in the manner mentioned in section 1 of this act; and if any such holder is a nonresident of the county or counties in which the proposed district lies, the postoffice address of such non-resident owner, if known.

(4) Generally the source from which the lands in the proposed district are to be irrigated, the character of the works, water rights, canals, and other property proposed to be acquired or constructed for irrigation purposes in the proposed district.

(5) A prayer that the lands embraced within the proposed district be organized as an irrigation district according to the provisions of this act.

The petition shall be accompanied with (1) a map or plat of the proposed district, and (2) a good and sufficient bond or undertaking to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions of this act, to pay all costs in and about the proceedings preliminary to the organization of the district in the event that said organization shall not be effected.

Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands, shall not operate to render invalid any proceedings hereunder or to deprive the district court of jurisdiction of the subject matter. Provided such misdescribed lands or misnamed persons shall not be included in said district. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2311. Order and Notice of Hearing on Petition.

(Section 3.) On such petition being filed, the district court or judge thereof shall make an order fixing the time and place of hearing on the petition and directing that notice thereof be given. Thereupon the clerk of said court shall cause to be published at least once a week for two successive calendar weeks in some newspaper published in the county where the said petition is filed, a copy of such petition, together with a notice, stating the time and place, by the said district court fixed, when and where the hearing on said petition will be had; and if any portion of the lands within the proposed district lies within any other county or counties, then said petition and notice shall be published as above provided in a newspaper published in each such other county. If there be no newspaper published in such county said petition and notice may be published in a newspaper published in an adjoining county.

The first publication of said petition and notice shall be not less than thirty days prior to the time mentioned in said notice for said hearing.

Nonresidents.—If any holder of title or evidence of title to lands within the proposed district is a nonresident of the county or counties in which the proposed district lies, the clerk of said court shall, within three days after the first publication aforesaid, mail a copy of said petition and notice to each such nonresident whose postoffice address is stated in said petition.

Proof of Notice.—The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said petition and notice, affixed to a copy of said notice, shall be sufficient evidence of such facts. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2312. Hearing on Petition and Appointment of Commissioners.

(Section 4.) At the time specified in the notice mentioned in the preceding section, the district court in which the petition aforesaid is filed shall hear the petition, but may adjourn such hearing from time to time, not exceeding three weeks in all, and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners, or any other person or persons interested, shall permit the petition to be amended, and may order further or additional notice to be given. Upon such hearing all persons interested whose lands or rights may be damaged or benefited by the organization of the district or the irrigation works or improvements therein or to be acquired or constructed as hereinafter set forth, may appear and contest the necessity or utility of the proposed district, or any part thereof, and the contestants and petitioners, may offer any competent evidence in regard thereto.

It shall be the duty of the court to hear and determine whether the requirements of sections one (1), two (2) and three (3) of this act have been complied with and for that purpose shall hear all competent and relevant testimony that may be offered.

The court may make such changes in the proposed district as may be deemed advisable, or as fact, right, and justice may require; but shall not exclude from such proposed district any land which is susceptible of irrigation from the same general source and by the same general system of works applicable to the other lands of such proposed district if the owner or owners of such lands shall file in such district court a written request that such lands be included in such district; nor shall any lands which will not, in the judgment of the court, be benefited by irrigation by means of said system of works, nor shall lands already under irrigation, nor lands having water rights appurtenant thereto, nor lands that can be irrigated from sources more feasible than the district system, be included within such proposed district, unless the owner of such lands shall consent in writing to the inclusion of such lands, in the proposed district, as hereinafter provided, and to this end the court may subdivide lands included within the petition or proposed at the hearing to be included within such district into forty-acre tracts or smaller subdivisions thereof. Lands of the district need not be contiguous, and any particular tract or tracts, irrespective of the location in the district, may be excluded.

If, on final hearing, it is found by the court that the petition does not substantially comply with the aforesaid requirements of this act, or that the

facts therein stated are not sustained by the evidence, then the court shall dismiss the petition at the cost of the petitioners, and shall make and enter an order to that effect; but if it is found that said petition substantially complies with said requirements and that the facts therein stated are sustained by the evidence, then the court shall make and enter an order:

- (1.) Setting forth said finding and allowing said petition.
- (2.) Establishing the proposed district.
- (3.) Giving accurate descriptions of the lands included within the proposed district.
- (4.) Dividing the proposed district into three divisions, as nearly equal in size as practicable.

(5.) Appointing three competent persons, having the qualifications as provided by section 5 of this act, as commissioners, one commissioner to be appointed for each division of the district.

Such finding and order shall be conclusive upon all the owners of lands within the district that they have assented to and accepted the provisions of this act; and shall be final unless appealed from to the supreme court within sixty days from the date of entry of such order. A copy of such order duly certified to by the clerk of said court, shall be filed for record within thirty days after such order is made and entered with the county clerk and recorder of the county wherein lands included within such district are situated; provided, however, there shall be omitted from such copy lands not situated in the county in which such copy is filed.

Every irrigation district so established hereunder is hereby declared to be a public corporation for the promotion of the public welfare, and the lands included therein shall constitute all the taxable and assessable property of such district for the purposes of this act. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2313. Board of Commissioners—Qualifications of Commissioners and Term of Office.

(Section 5.) No person shall be qualified to hold the position of commissioner unless he be an owner of land within the district, and shall be a resident of the county in which the division of the district, or some portion thereof for which such commissioner so elected is situated.

The commissioners appointed as aforesaid shall hold their respective offices until the second Saturday in April following their appointment and until their respective successors are elected and qualified as and in the manner hereinafter provided. Each of such commissioners shall qualify in the same manner as justices of the peace, and shall give a bond in the sum of two thousand dollars, conditioned upon the faithful performance of his duties, to be made payable to the state for the benefit of the district; which bond shall be approved by the district court or judge thereof and filed in the office of the clerk of said court.

Provided, that in case any district organized under this title is appointed fiscal agent of the United States or by the United States is authorized to make collections of moneys for and on behalf of the United States in connection with any federal reclamation project, each such commissioner shall execute a further and additional official bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of the duties of his office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appoint-

ment or authorization, and any such bond may be sued upon by the United States or any person injured by the failure of such commissioner or the district to fully, promptly, and completely perform their respective duties. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2314. Organization of Board of Commissioners.

(Section 6.) The commissioners shall meet within ten days after their appointment and shall organize as a board by the election of one of their number as president; they shall also elect a secretary (who may or may not be a commissioner). The compensation of the secretary and all other employees authorized under this act shall be fixed by the board.

The board shall also at this meeting designate the place in the district where the office of the board shall be established and maintained and its records kept, which place shall be in the county containing the major portion of the lands of the district; and such place shall not be changed except by resolution of the board, of which notice shall be given by at least one publication in some newspaper published or of general circulation in the county wherein the office of the district is located, and by posting in at least three public places in each division of the district. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2315. Meetings of the Board.

(Section 7.) All meetings of the board of commissioners shall be public and a complete record of all proceedings shall be kept by the secretary.

Regular meetings of the board shall be held at such times as the board may by rule or by-laws prescribe; and special meetings may be called on twenty-four hours' notice by the president or any two members of the board, or in such other manner and upon such other notice as the board may by rule or by law prescribe. All meetings of the board may be adjourned as the board shall order or direct. A majority of the commissioners shall constitute a quorum. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2316. Compensation of Commissioners.

(Section 8.) The commissioners when sitting as a board, or when engaged in the business of the district, shall each receive not to exceed three dollars per day and their actual and necessary expenses. No commissioner or any other officer named in this act shall in any manner be interested directly or indirectly, in any contract, awarded or to be awarded by the board or in the profits to be derived therefrom; and for any violation of this provision such officer shall be deemed guilty of a misdemeanor and his conviction thereof shall work a forfeiture of his office and he shall be punished by a fine not exceeding five hundred (\$500) dollars or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2317. Board of Commissioners.

(Section 9.) The board of commissioners of every irrigation district established and organized under and by virtue of this act shall constitute the corporate authority of said district. They shall have the power, and it shall be their duty to manage and conduct the business and affairs of the

district; adopt a corporate seal therefor; make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required, and prescribe their duties. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works and the line for any canal or canals, and the necessary branches for the same, on any lands which in the judgment of the board may be deemed best suited for such location. Said board shall have power and authority to appropriate water in the name of the district, and to acquire by purchase water and water rights, and to acquire by purchase, condemnation, or other legal means, lands for rights of way, lands for reservoirs for the storage of needful waters, lands for dam sites, and such other lands as may be necessary for the construction, use, maintenance, repairs, and improvement of such system of works, and also to acquire by purchase canals and works already constructed, or in course of construction, and to contract with the owner or owners of such canals and works so purchased and in course of construction for the completion thereof. But no purchase of any water, or water rights, or canals, or reservoirs, or reservoir sites or irrigation works, or other property of any nature or kind for a price in excess of ten thousand dollars shall be final or binding on the district, nor shall the purchase price thereof be paid without the written consent or petition of at least a majority in number and acreage of the holders of title, or evidence of title to the lands within the district. Said board may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the federal reclamation act and all acts amendatory thereof or supplementary thereto and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any act of Congress providing for or permitting such contract, and in case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety per cent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited it shall be the duty of the board of commissioners to include as part of any levy or assessment provided for in section 46, an amount sufficient to meet each year all payments accruing under the terms of any such contract; and the board may accept on behalf of the district, appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto. Said board may also construct and maintain the necessary dams, reservoirs and works for the collection and distribution of water for the district, and do any and every lawful act necessary to be done in order that sufficient water may be

furnished to each land owner in the district for irrigation purposes. The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of the district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this act, or acquired in pursuance thereof, and in all courts, suits, or proceedings, the said board may sue, appear and defend in person or by attorneys, and in the name of such irrigation district. The said board may adopt rules and by-laws governing the calling and holding of meetings of the board, the manner of transacting business thereat, and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of said board to pass or adopt by-laws, rules and regulations for the apportionment and distribution of water to the lands of the district, and for the protection and preservation of the works and other property of the district, which shall be printed in convenient form for distribution in the district. Said board shall have power generally to do and perform all such other acts as shall be necessary or appropriate to fully carry out the purposes of this act. All orders and resolutions shall be passed or adopted by a majority of the commissioners by a yea and nay vote, to be entered upon the records of the board. For the purpose of purchasing or constructing necessary irrigation canals or works or acquiring the necessary property and rights therefor and otherwise carrying out the provisions of this act, the board of commissioners of any such irrigation district must as soon after such district has been organized, as practicable, formulate a general plan for such purchase, construction, and acquisition of such property, and shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plan, the amount of land that can be irrigated thereunder, and furnish the proper basis for an estimate of the cost of carrying out such plan and the value of any canal, works, property, or system of irrigation proposed to be purchased. All such surveys, examinations, maps, plans, and estimates shall be made by or under the direction and supervision of an irrigation engineer of well-known standing and competency, and all such necessary surveys, examinations, maps, plans, and estimates must be certified to by him. When all such are completed, he shall submit them with all proper field-notes to and file them with the board of commissioners accompanied by his report and recommendation thereon. This report shall include a discussion of said plans by him submitted to said board, of the question of water supply, of the sufficiency of the works proposed to accomplish the desired results, of the practicability of the proposed system from an engineering standpoint, of the probability of being acquired or constructed within the estimate of the cost stated, and such general discussion and recommendations in regard to the engineering and financial features of the whole matter as in the judgment of such engineer shall be desirable for the information of the people of the district. Such report shall be accompanied by a map when such is necessary for a proper explanation or understanding of the same. Upon receiving such report said board of commissioners shall proceed to determine the amount of money necessary to be raised for the purchase or construction of said proposed property, canals, or irrigation works and system, and within ten days after

arriving at such determination shall cause the secretary of said board to notify all persons or corporations holding, or evidence of title, to lands within said district (ascertained as provided in section 1 of this act [§ 2309 herein]) of the filing of said report and their determination thereon. Said notices shall be given through the United States mail by letter addressed to such persons or corporations at their last known postoffice address of each person or corporation aforesaid. A certificate of the secretary of the board as to the fact of mailing said notice, affixed to a copy of said notice and recorded in the record book of said board of commissioners, shall be sufficient and conclusive evidence of such fact. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2318. Change in Divisions and Election Precincts.

(Section 10.) The board of commissioners shall within six months after the organization of the district divide the district into one or more election precincts.

Said board when they deem it advisable for the best interests of the district and the convenience of the electors thereof, may, at any time, but no less than thirty days before any election to be held in the district, change the boundaries of the divisions and election precincts of the district; provided that such [action] of the board, to be effective, shall be approved by the district court, and provided also that in making such changes the several divisions of the district shall be kept as nearly equal in area and population as practicable.

Such division into election precincts and such change of boundaries of the divisions or election precincts shall be made by resolution or order of the board to be recorded in the minutes of the board, together with the order of the district court, approving the same, and a certified copy of the same shall be filed in the office of the county clerk and recorder in each county in which any of the lands of the district are situated. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2319. Elections—First Election of Commissioners and Regular Elections.

(Section 11.) Not less than twenty days prior to the expiration of the terms of office for which the first commissioners were appointed under the provisions of section 4 of this act [§ 2312 herein], an election shall be called and held in said district in the manner herein provided for the calling and holding of regular elections therein, at which three commissioners, one for each division of the district,—shall be chosen by the electors of the entire district. The commissioners so elected shall hold their respective offices until the second Saturday in April of the year succeeding their election and until their respective successors are elected and qualified.

The regular election for commissioners in each district shall be held annually on the first Saturday in April of each year, and on the second Saturday in April next following their election the commissioners-elect shall meet and organize as a board by electing a president, from their number and a secretary, who may or may not be a commissioner and who shall each hold office during the pleasure of the board. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2320. Vacancies.

(Section 12.) In case of a vacancy in the board of commissioners from any cause, such vacancy shall be filled for the remainder of the term by

appointment by the judge of the district court of the county in which the division or major portion thereof is situated. The appointee shall be an owner of land situated in the same division of the district as his immediate predecessor on such board, and shall hold office until his successor is elected and qualified. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 255.]

§ 2321. Notice of Election and Appointment of Election Officers.

(Section 13.) Fifteen days before any election held under this act, the secretary of the board of commissioners shall post notices in three public places in each election precinct of the time and places of holding the election, and shall also post a notice of the same in the office of said board. Prior to the time for posting notices the board by a resolution or order entered on their records, shall designate the house or place within each precinct where the election shall be held, and shall appoint from each precinct, from the electors thereof three judges who shall constitute a board of election for such precinct. Said judges shall appoint one of their number to act as clerk. If the board fail to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board shall prescribe the forms and provide for the printing and distribution of the ballots for all elections held under this act. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2322. Oaths of Election Officers.

(Section 14.) The judges may administer all oaths required in the progress of an election and appoint judges and clerks, if, during the progress of election any judge or clerk shall cease to act. Any member of the board of election may administer and certify oaths required to be administered during the progress of an election. Before opening the polls, each member of the board must take and subscribe an oath faithfully to perform the duties imposed upon him by law. Any elector of the precinct may administer and certify any such oath. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2323. Hours of Election.

(Section 15.) The polls shall be opened at eight o'clock A. M. and be kept open until five o'clock P. M., when the same shall be closed. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2324. Conduct of Election.

(Section 16.) Voting may commence as soon as the polls are opened and may continue during all the time the polls remain opened, and such election shall be conducted, except as herein otherwise provided, as nearly as practicable in accordance with the provisions of the general election laws of this state, except that no registration shall be required. As soon as all the votes are counted, a certificate shall be drawn upon each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes cast for each candidate or for each proposition, and designating the office or proposition voted for which number shall be written in figures and in words at full length. Each certificate shall be signed

by the clerk and judges. One of said certificates, with the poll list and the tally paper to which it is attached, shall be retained by one of the judges, and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the judge during the counting thereof, in the order in which they were entered upon the tally list by the clerk; and said ballots, together with the other of said certificates, with the poll list and tally to which it is attached, shall be sealed by the judges and clerk, and indorsed: "Election returns of (naming the precinct) precinct," and be directed to the secretary of the board of commissioners of said district, and shall be immediately delivered by the judges or some other safe and responsible carrier designated by said judges, to said secretary, and the ballots shall be kept by the board of commissioners in the same manner as ballots in other elections. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2325. Canvass.

(Section 17.) No list, tally paper, or certificate returned from any election, shall be set aside or rejected merely for want of form, if it can be satisfactorily understood. The board of commissioners of the district shall meet on the first Monday after the election to canvass the returns. If, at the time of the meeting, the returns from each precinct in the district in which the polls were opened have been received, the board shall then and there proceed to canvass the returns thereof; but if all the returns have not been received, the canvass shall be postponed from day to day until all the returns have been received. The canvass must be made in public. The board shall declare elected the person receiving the highest number of votes so returned for each office, and also declare the result of the vote on any question submitted. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2326. Statement of Result of Election.

(Section 18.) The secretary of the board of commissioners shall, as soon as the result of any election held under the provisions of this act is declared, enter in the records of such board and file with the county clerk of the county in which the office of said district is located, a statement of such results, which statement must show: First, a copy of the election notice and the proof of posting the same. Second, the names of the judges and clerks of said election. Third, the whole number of votes cast in the district and in each precinct of the district. Fourth, the names of the persons voted for. Fifth, the office to fill which each person was voted for. Sixth, the number of votes given in each precinct for each of such persons. Seventh, the number of votes given in the district for each such person. Eighth, the names of the persons declared elected. Ninth, the proposition or propositions submitted, the vote for and against each, and the result of the vote thereon. The secretary shall immediately make out and deliver to each person elected a certificate of election, signed by him and authenticated with the seal of the district. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2327. Qualifications of Voters.

(Section 19.) At all elections held under the provisions of this act, except as herein otherwise expressly provided, the following persons hold-

ing title or evidence of title to lands within the district shall be entitled to vote:

(1.) All persons having the qualifications of electors under the Constitution and general and school laws of the state;

(2.) Guardians, executors, administrators and trustees residing in the state.

(3.) Domestic corporations, by their duly authorized agents.

In all elections held under this act, each elector shall be permitted to cast one vote for each forty acres of land or major fraction thereof in the district owned by such elector, but any elector owning twenty acres or less shall be entitled to vote. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2328. Nominations.

(Section 20.) Candidates for the office of commissioner to be filled by election under the provisions of this act, may be nominated by petition filed with the secretary of the board of commissioners of the district at least ten days prior to said election and signed by not less than five electors of the district; such petition shall specify the respective divisions for which such nominees, respectively, are candidates; and the names of all candidates for each division of the district shall be printed on the same ballot. If no nominations are made the electors of the district shall write on the ballots the names of the persons for whom they desire to vote for commissioners; provided nothing herein contained shall prevent an elector from voting for any qualified person, although the name does not appear upon the official ballots. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2329. Special Elections.

(Section 21.) The board of commissioners may at any time call a special election and submit to the qualified electors of the district any question which under the provisions of this act is required, or which in the judgment of the board is proper, to be submitted to popular vote. Such election shall be called, noticed and conducted and the result thereof determined and declared in the manner provided in this act relative to general district elections; provided, however, that the notice thereof shall in addition to being posted, also be published at least once, not less than ten days prior to the date of the election, in some newspaper published in the county in which the office of the board of commissioners of the district is located. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2330. Where Documents may be Filed and Proceedings Had.

(Section 22.) Where the lands of a district lie within more than one county, all petitions, papers, documents or other instruments shall be filed, and proceedings had in the county containing the greater portion of said district. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2331. Change in Boundaries of Districts—Not to Affect Organization or Rights.

(Section 23.) The boundaries of any irrigation district organized hereunder may be changed in the manner herein prescribed; but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever

kind or nature; nor shall it affect, impair or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2332. Election of Commissioners of Irrigation Districts.

(Section 23a.) The regular election of commissioners in each district shall be held annually on the first Saturday in April of each year, at which three commissioners, one for each division of the district, shall be chosen by the electors of the entire district. On the second Saturday in April next following their election the commissioners shall meet and organize as a board by electing a president from their number, and a secretary, who may or may not be a commissioner, and who shall each hold office during the pleasure of the board. [Amendment approved February 16, 1909; Laws 1909, p. 19.]

§ 2332a. Change in Area of Districts.

(Section 24.) (a) The boundaries of any irrigation district may be extended at any time to include lands susceptible of irrigation by the works of the district or through exchange or substitution of water, as hereinafter provided, excluding and excepting therefrom, however, all lands already under irrigation, or lands having water rights appurtenant thereto, or lands that can be irrigated from sources more feasible than the district system, unless the owner of such lands shall consent in writing to have such lands included in said district; provided, however, that a petition be presented to the district court of the judicial district in which the irrigation district was organized, asking for such extension, upon terms to be fixed by the court, signed by the holders of title, or evidence of title (evidenced as in section 1 of this act provided) of the lands proposed to be included in the district, representing not less than two-thirds in acreage of said lands. When such petition is presented, the district court or judge thereof shall appoint a day for a public hearing, notice of which shall be given by the clerk of the court by publication at least once a week for at least two weeks in a newspaper published or of general circulation in the county in which the office of the district is situated; and if any of said lands sought to be included in the district lie in a county or counties other than that in which the office of the district is situated, such notice shall also be likewise published in some newspaper published or of general circulation in each such other county or counties; or if there be no such newspaper, then such notice shall be posted in at least three public places in the territory sought to be included. At such public hearing, the district court shall hear those who may desire changes made in the proposed extension, and all those whose lands are included or sought to be included in the district, and all other persons whose rights may be affected by the proposed extension. Such public hearing may be adjourned from day to day, not exceeding twenty days in all, and the court shall make an order, either granting or denying said petition; and if said petition is granted, said order shall describe the lands included in said extension and the terms on which said land shall be included, and a copy of said order shall be filed with the county clerk and recorder in the county wherein said lands are situated. The order of the district court shall be final and conclusive, the same as the order originally creating the district, unless appealed from to the supreme court within ten days from the entry of the order; provided, however, that the extension of such boundaries shall not

deprive the lands already in said district of an adequate supply of water for irrigation purposes.

(b) That whenever any lot, tract, or parcel of land has been heretofore, or may hereafter be included within the boundaries of any public irrigation district formed under the laws of this state, and the acreage thereof fixed and stated in the decree for the creation of said district or in any other proceeding relating thereto, is fixed at a greater number of acres than actually exists within such lot, tract, or parcel of land, or at a greater number of acres than can be irrigated from the reclamation system of said district; or whenever from any action or proceeding by or on behalf of said district or its commissioners, any such lot, tract, or parcel of land included therein has been or is about to be assessed for a greater acreage than exists therein, or can be irrigated from the reclamation system of said district, the owner or holder of title, or evidence of title to said lands as defined by the irrigation district acts, may have the taxable acreage contained therein fixed and adjudicated as provided for by this act.

(c) That the owner or holder of title, or evidence of title, as defined by the irrigation district acts, may file in the district court of the county wherein said lands are situated a petition praying that the acreage of the lands set forth and described in such petition may be permanently fixed and adjudicated, which petition shall set forth:

1. The name or names of the owner or owners, holder of title, or evidence of title thereto, who shall be the party or parties "plaintiff" therein.

2. The names and kind and character of interest of every person owning, holding, or claiming any right, title, or interest in or to the lands described in said petition, who shall, where they do not appear as parties plaintiff under subdivision 1 hereof, sit as parties "defendant."

3. The name of the district in which said lands are included, together with the name of the board of commissioners thereof, and the secretary thereof, and the name or names of the bondholders, if any, thereof, if known; and said district, its commissioners, secretary, and the known or unknown bondholders thereof shall be made parties defendant therein.

4. A statement of the substance of all proceedings, orders, and decrees creating said districts and fixing the acreage of the lands therein described, together with any proceedings of the board of commissioners of said district, or its officers, relating to the acreage thereof, to such extent as to fully inform the court of the manner and extent to which said lands have been included and taxed or assessed in said district.

5. The actual acreage of the lands described irrigable from the reclamation system of said district.

6. The excess of acreage complained of.

7. The amount of taxes previously paid on such excess acreage.

8. A general statement of the exact nature of the relief sought and the grounds therefor.

(d) That upon the filing of such petition, summons shall be issued thereon and served upon all parties defendant thereto, with a copy of the petition attached thereto, in the same manner and in the same form as are issued in civil actions.

(e) That whenever the bondholders of any district who are necessary parties to such a proceeding are unknown, they may be joined as the unknown bondholders of said district, and whenever said bondholders are unknown or any necessary party thereto cannot after due diligence be

found within the state of Montana, service upon such party or parties, including said bondholders, may be had by publication of a summons which shall be obtained, issued, and published in the same manner as a published summons in a civil action.

(f) That the provisions of the Code of Civil Procedure of the state of Montana, and the rules of pleading and practice applicable to civil actions generally shall apply, so far as applicable, to this proceeding.

(g) That if the allegations of such petition be denied the district court shall, when the time for appearance of the parties defendant thereto has expired and said parties have appeared by answer or made default, proceed to hear and determine the issues in said proceedings as joined.

(h) Upon the hearing of said petition the court shall by its decree, fix, and determine the irrigable acreage contained in the lots, tracts, or parcels of land complained of, and the acreage so fixed by such decree shall be the acreage upon which all assessments of said lands in said irrigation district shall thereafter be based, and upon said hearing the court shall determine the amount of taxes, if any, which have theretofore been levied and assessed upon any excess or nonexistent acreage, and shall enter judgment in favor of the owner or holder thereof and against said district for the excess of taxes theretofore collected by said district, or shall cancel such excess if the same shall not have been collected for the benefit of said district: Provided, however, that no judgment for the recovery of excess taxes paid shall be entered against any district until there shall have been deducted therefrom any unpaid valid taxes and assessments levied and assessed for the benefit of said district against the lands described in said petition, and all sums so recovered shall bear interest at the rate of eight per cent per annum from the date of payment by the land holder, and said judgment shall bear legal interest from the date of entry; and the judgment so rendered may be paid by warrants or funds of said future taxation upon said lands, and costs shall be allowed to the plaintiff in the same manner as other civil actions.

(i) From any such judgment or decree an appeal may be taken to the supreme court by any party thereto, at any time within ten days of the entry of said judgment or decree. Such appeal shall be taken, perfected, and heard in the manner prescribed by the Civil Code of Procedure governing appeals from the district court to the supreme court. If no such appeal be taken within the time aforesaid, or if taken, the judgment or decree of the district court shall be affirmed by the supreme court, such judgment or decree shall be forever conclusive upon the parties thereto.

Provided, that in case contract has been made between the district and the United States as in section 9 [§ 2317 herein] provided, no change shall be made in the boundaries of the district, and the district court shall make no order changing the boundaries of the district until the Secretary of the Interior shall assent thereto in writing and such assent be filed with the district court. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2333. Contracts.

(Section 25.) The construction by the district of all irrigation works of every kind whatsoever, amounting to five thousand dollars or more, shall be done by contract, and before any such contract is let, the board of commissioners shall employ competent engineers to make surveys, plans, maps, and estimates which shall include everything necessary to show the entire cost in detail of everything necessary to complete the work required to irrigate

any of the lands in the district under the proposed system. Notice of any contract to be awarded for construction of such works shall state where the plans and specifications may be seen and shall be published at least once a week for three successive calendar weeks in a newspaper published or of general circulation in the county where the office of the district is located. Sealed bids shall be called for in such published notice and bids shall be opened in public, and the contract shall be awarded only to the lowest responsible bidder, who shall be required to give bond for the faithful performance and completion of the contract. The board shall have the right to reject any and all bids in its discretion. The provisions of this section shall not apply to any contract for the completion of works in course of construction by private owners from whom said works may be acquired under the provisions of section 9 [§ 2317 herein] of this act. Provided, that the provisions of this section shall not apply in the case of any contract between the district and the United States. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2334. Right of Way.

(Section 26.) The board of commissioners shall have the right to construct the said irrigation works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of said canal or canals may intersect or cross, in such manner as to afford security to life and property; but said board shall restore the same, when so crossed or intersected, to its former state as near as may be so as not to destroy its usefulness; and every company whose railroad shall be intersected or crossed by said works, shall unite with said board in forming said intersection and crossing; and if such railroad company and said board, or the owners and controllers of said property, thing or franchise so to be crossed cannot agree upon the amount to be paid therefor, or the points or the manner of said crossing or intersections, the same shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

But nothing herein contained shall require the payment to the state, or any subdivision thereof, of any sum for the right to cross any public highway with any such works. The right of way is hereby given, dedicated, and set apart, to locate, construct and maintain said works over and through any of the lands which are now or hereafter may be the property of the state. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2335. Noninterference With Navigation or Water Rights.

(Section 27.) Navigation shall never in any wise be impeded by the operation of this act, nor shall any vested interest in or to any mining or agricultural water rights or ditches, or in or to any water rights, or reservoirs or dams now used beneficially by the owners or possessors thereof, in connection with any mining, or agricultural industry, or by persons purchasing or renting the use thereof, or in or to any other property now used, directly or indirectly, in carrying on or in promoting the mining or agricultural industry, ever be affected by or taken under its provisions save and except that rights of way may be acquired over the same. Provided, further, that the right of eminent domain shall not be otherwise considered abridged by the provisions hereof. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2336. Diversion of Waters.

(Section 28.) Nothing herein contained shall be deemed to authorize the diversion of the waters of any river, creek, stream, canal, or ditch from its channel, to the detriment of any person or persons having an interest in such river, creek, stream, canal or ditch, or the waters therein. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2337. Use and Distribution of Water—Leasing of Works or Water.

(Section 29.) The board of commissioners shall have the power, with the written consent of a majority in number and acreage of the owners of the lands in the district, to lease in whole or in part the system of canals and works or water belonging to the district, whenever such leasing may be considered for the benefit of the district; provided, that when said board contemplates the leasing of the canals or works, or water of such district, they shall so declare by resolution or order, and give notice thereof by publishing the same in some newspaper published in the county in which the office of such irrigation district is situated, at least two calendar weeks prior to the making of any lease. Provided, however, that no such lease shall be made unless a majority in number and acreage of the holders of title or evidence to the lands in the district, shall file with the board a written consent to make such lease. Such lease shall in no way interfere with any rights that may have been established by law at the time such lease is made, nor shall such lease operate so as to deprive any owner or owners of land in such district of the use of water from such works upon such lands; and further provided, that the board of commissioners shall require a good and sufficient bond to secure the faithful performance of the lease by the lessee. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2338. Title of Property of District.

(Section 30.) The legal title to all property acquired by or for any irrigation district under the provisions of this act shall immediately and by operation of law vest in such district, to be by it held in trust for the uses and purposes of the district as set forth in this act. And the board of commissioners is hereby authorized and empowered to hold, use, maintain, acquire, manage, occupy and possess said property as herein provided. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2339. Use of Waters, etc., a Public Use.

(Section 31.) The use of all water required for the irrigation of the land of any district formed under the provisions of this act, together with the rights of way for canals and ditches, sites for reservoirs, and all property required in fully carrying out the provisions of this act, is hereby declared to be a public use, subject to the regulations and control of the state, in the manner prescribed by law. Provided, all water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress, and rules and regulations of the Secretary of the Interior, and the provisions of said contract in relation thereto. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2340. Board to Apportion Water.

(Section 32.) The board of commissioners shall apportion the water for irrigation among the lands in the district in a just and equitable man-

ner and the maximum amount apportioned to any land shall be the amount that can be beneficially used on said land, and such amount of water shall become and shall be appurtenant to the land and inseparable from the same, but subject to reduction as hereinafter provided; provided, however, that any water owner of the district shall have the right to sell or assign for one season any of the water apportioned to him and not required for use upon the land to which such water belongs. Provided all water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress, and rules and regulations of the Secretary of the Interior, and the provisions of said contract in relation thereto. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2341. Reduction in Case of Shortage.

(Section 33.) In the event of a shortage of water, the amount of water delivered to each particular tract or piece of land shall be reduced proportionately. Provided, all water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress, and rules and regulations of the Secretary of the Interior, and the provisions of said contract in relation thereto. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2342. Surplus Water.

(Section 34.) All surplus water belonging to the district may be sold or disposed of by the board for the benefit of the district. Provided, all water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress, and rules and regulations of the Secretary of the Interior, and the provisions of said contract in relation thereto. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2343. Lands Under Irrigation from Same or Other Sources.

(Section 35.) Any land under irrigation from any source may be included in any irrigation district either at the time of the organization of such district, or at any time thereafter, and such land shall be entitled to receive and shall be given the same amount of water necessarily used thereon at the time of such inclusion; and the canals, ditches, flumes, dams, or other works previously used to irrigate such land, may be used or supplanted either wholly or in part by the district works; provided, however, that the owner of such land, canals, ditches, flumes, dams or other works shall be entitled to compensation for any and all damage sustained by reason of the appropriation of the same, or by the construction of said district works; provided, however, that lands already under irrigation, or lands having water rights appurtenant thereto, or lands which can be irrigated from sources more feasible than the district system, shall not be included within such district, unless the owner of such lands shall consent in writing to have such lands included in said district. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2344. Substitution of Water.

(Section 36.) Whenever any canal constructed, owned, or controlled by the district crosses any creek, stream, water channel or course, the

water of which is used to irrigate land lying below such canal, the district shall have the right to contract with the owner or owners of the right to the use of the water or waters in any such stream, creek, water channel or course, for an exchange of water, and to supply him with water from the district system which contract shall be in writing, signed and acknowledged by all the parties thereto before some officer authorized to take acknowledgments, which acknowledgment shall be certified by such officer in the manner that deeds are now required to be certified to entitle them to be recorded, and shall be filed and recorded in the office of the clerk and recorder of the county in which the creek, stream, water channel or course is situated, and thereafter such district shall have the right to supply such land below the canal, whether such land is included in the district or not, with water from the works of the district, and the owner or lessee of such land shall, in such case, be furnished with the same quantity of water as that to which such owner or lessee would be entitled out of such creek, stream, water channel or course, had the district works not been built. The district shall have the right to appropriate and take possession of the water so replaced and shall have the same right to such water as the owner or lessee of the land had, so long as such water shall be replaced by a like quantity of water from such works, but the appropriating and taking of such water by the district shall never deprive such owner or lessee of the right to retake and use the same, should such owner or lessee at any time be prevented from having or using a like quantity of water from such works; and the district shall also have the right to make appropriation and take possession of such water at any point, and to sell, lease, or use such water on any land either above or below the canal, and the appropriation of such water at any point or selling, leasing, or using the same shall not prejudice the right of the district to the water and shall not increase the rights of the owner or owners of any other water right on such creek, stream, water channel or course. Provided, all water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress, and rules and regulations of the Secretary of the Interior, and the provisions of said contract in relation thereto. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2345. All Lands Already Under Irrigation not Chargeable Except by Consent and for Certain Purposes.

(Section 37.) Where lands already under irrigation, the water and irrigation works irrigating the same belonging to the owner of said lands, are included in any district, such lands shall not be charged with any tax or assessment for construction or for payment of the interest or principal of any bonds issued to secure money for construction or purchase of the district irrigation works, or for any payments other than for operation and maintenance, due or to become due under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided, except with the consent of the owner thereof, which consent shall be filed with the recorder of deeds of the county in which such lands are situated, but such lands shall be assessed for administrative and maintenance purposes the same as other lands in the district. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2346. Limitation on Debt Incurring Power.

(Section 38.) The board of commissioners, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds, or otherwise, except as provided in this act; and any debt or liability incurred in excess of such express provisions shall be, and remain absolutely void except that for the purpose of organization, or for any of the immediate purposes of this act, or to make or purchase surveys, plans and specifications, or for stream gauging and gathering data, or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district, and may cause warrants of the district to issue therefor, bearing interest at the rate not to exceed six per centum per annum. [Amendment approved March 10, 1913; Laws 1913, c. 127, p. 475.]

§ 2347. Exemption of Irrigation District Property.

(Section 39.) The bonds issued under the provisions of this act, rights of way, ditches, flumes, pipe-lines, dams, water rights, reservoirs and other property of like character, belonging to any irrigation district, shall not be taxed for state, county or municipal purposes. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2348. Bonds—Petition for Bonds and Action Thereon.

(Section 40.) For the purpose of providing the necessary funds for constructing necessary irrigation canals and works, and acquiring the necessary property and rights therefor, and meeting the expenses incident thereto, and for the purpose of acquiring by purchase or otherwise, water rights, canals, and irrigation works constructed or partially constructed, and for the purpose of otherwise carrying out the provisions of this act, the board of commissioners of any district organized hereunder may issue the negotiable coupon bonds of the district as and in the manner herein-after provided. No bonds shall be issued by or on behalf of any irrigation district organized hereunder, except upon petition signed by at least a majority in number and acreage of the holders of title or evidence of title to the lands included within said district. Such petition shall be addressed to the board of commissioners; shall set forth the aggregate amount of bonds to be issued, and the purpose or purposes thereof; shall have attached thereto an affidavit verifying the signatures; and shall be filed with the secretary of the board of commissioners. Upon the filing of such petition the board of commissioners shall by appropriate order or resolution authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the petition; fix the numbers, denominations, and maturity or maturities of said bonds; specify the rate of interest thereon; and whether payable annually or semi-annually; designate the place of payment of said bonds and interest coupons; prescribe the forms of said bonds and interest coupons to be attached thereto; but if contract is to be made with the United States as in section 9 [§ 2317 herein] provided and bonds are not to be deposited with the United States in connection with such contract, the board of commissioners need not authorize the issuance of bonds, or if bonds are required in addition to such contract, may authorize bonds only for the amount needed in addition to such contract; and provide for the levy of a special tax or assessment as in this act provided

on all the lands in the district for the irrigation and benefit of which said district was organized and said bonds are issued, or said contract is to be made, sufficient in amount to pay the interest on and principal of said bonds when due, and all amounts to be paid to the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided.

Such order or resolution shall also provide for the confirmation proceedings in the district court hereinafter mentioned. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2349. Confirmation by District Court.

(Section 41.) Within ten days after the adoption of the order or resolution mentioned in section 40 of this act [§ 2348 herein], the board of commissioners shall file a petition in the district court of the judicial district wherein is located the office of said board, to determine the validity of the proceedings had relative to the issuance of said bonds and to the levy of said special tax or assessment.

Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by notice given as hereinafter provided. Such petition shall set forth (1) generally, the establishment and organization of the district; (2) a certified copy of the petition mentioned in section 40 of this act; (3) a certified copy of the order or resolution mentioned in section 40 of this act [§ 2348 herein]; (4) a prayer for the confirmation of the proceedings of the board stated in the petition, and for the confirmation of the bond issue and the special tax or assessment levied to pay the bonds and interest thereon. Upon the filing of said petition in the district court, the court or judge thereof shall fix the time for the hearing of said petition, which shall not be less than fifteen days from the date of filing the petition in said court, and shall order the clerk of the court to give notice of the filing of said petition and the date of the hearing thereon by publication at least once a week for two calendar weeks in a newspaper published or of general circulation in the county where the office of the board of commissioners of the district is situated, and also by posting a written or printed copy of such notice in at least three public places in each division of the district, the first of such publications and such posting to be not less than fifteen days prior to the date fixed for said hearing.

Said notice shall state the substance of the petition and the time and place fixed for the hearing thereon, and that any person interested in or whose rights may be affected by the issuance or sale of said bonds, or the levy of said special tax or assessment or the proceedings had or to be had by the said board of commissioners with respect to said matters, may on or before the day fixed for the hearing of said petition, demur to or answer said petition, and may appear at said hearing and contest the granting of the prayer of said petition and the entry of any order of confirmation pursuant thereto.

Any person interested in or whose rights may be affected by the issuance or sale of said bonds, or the levy of said special tax or assessment, or the proceedings had or to be had by the board of commissioners of the district in connection with said matters and the entry of any order of confirmation pursuant thereto may enter his appearance in such proceedings and demur to or answer said petition and contest the granting of the prayer of said petition.

The provisions of the Code of Civil Procedure respecting the demurrer or answer to a verified complaint shall be applicable to a demurrer or answer to said petition. The persons so demurring to or answering said petition shall be the defendants in the proceeding, and the board of commissioners shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer shall be taken as true and every holder of title or evidence of title to lands included in the district failing to answer or demur to the petition shall be deemed to admit as true all the material statements thereof. The procedure in such action shall be determined by the Code of Civil Procedure.

Upon the hearing the district court shall find and determine whether the provisions and requirements of section 40 of this act [§ 2348 herein] have been complied with, and notice of the filing of the petition in the district court and of the time and place of the hearing thereon has been duly given for the time and in the manner herein prescribed, and shall have power and jurisdiction to examine and determine the regularity, legality and validity of the proceedings had preliminary and relative to the issuance of the bonds and the levy of the special tax or assessment in the petition mentioned, and the legality and validity of said bonds and special tax or assessment, and any and all actions taken by the board of commissioners in connection with said matters, and shall hear all objections filed to said proceedings, or any part thereof, or to the issuance of said bonds or the levy of the said special tax or assessment or any portion thereof. The court in inquiring into the regularity, legality and validity of said proceedings, shall disregard any error, omission or other irregularity which does not affect the substantial rights of the parties to said proceedings. The court may ratify, approve and confirm said proceedings in whole or in part, and may ratify, approve, and confirm said bonds and special tax or assessment, and enter its judgment or decree accordingly. From any such judgment or decree an appeal may be taken to the supreme court at any time within ten days from the entry of such judgment or decree. Such appeal shall be taken, perfected, and heard in the manner prescribed by the Code of Civil Procedure covering appeals from district court to the supreme court. If no such appeal be taken within the time aforesaid, or if taken and the judgment or decree of the district court be affirmed by the supreme court, such judgment or decree shall be forever conclusive upon all the world as to the validity of said bonds and said special tax or assessment and the same shall never be called into question in any court in the state. The costs of said proceedings shall be allowed or apportioned between the parties in the discretion of the court. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2350. Details of Bonds.

(Section 42.) All bonds issued under the provisions of this act shall be payable in gold coin of the United States, of the standard weight and fineness existing at the time of the issue; and shall run for a period not longer than thirty years from their date, but may contain a clause providing for their prior redemption and payment at the option of the board of commissioners of the district on any interest payment date after five years from their date.

Said bonds shall bear interest from their date until paid at a rate not to exceed six per centum per annum, payable annually or semi-annually, the installments of interest to date of maturity of principal to be evidenced

by appropriate coupons attached to each bond. Said bonds and interest coupons shall be payable at such place or places as the board of commissioners shall prescribe. Instead of straight maturity bonds, bonds may be issued to mature serially at such times and in such amounts as the board of commissioners shall determine, but no bonds so issued shall run for a longer period than thirty years from date of issue.

All bonds issued under this act shall be of such denomination or denominations, and in such form as the board of commissioners shall prescribe, and shall be signed by the president and attested by the secretary of the board under the corporate seal of the district; and each of the interest coupons to be attached to said bonds shall be executed by the original or engraved or lithographed facsimile signatures of said president and secretary.

The board may provide for the registration of bonds in their discretion.

The secretary of the board of commissioners shall keep a record of the bonds sold, their date, number, amount, maturity or maturities, to whom sold, rate of interest, and the place or places of payment thereof. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2351. Lien of Bonds.

(Section 43.) All bonds issued hereunder, and all amounts to be paid to the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided, shall be a lien upon all the lands originally or at any time included in the district for the irrigation and benefit of which said irrigation district was organized and said bonds were issued; and for the benefit of which such contract between the district and the United States was made; except upon such lands as may at any time be included in such district, on account of the exchange or substitution of water under the provisions of section 36 of this act and if any there be; and all such lands shall be subject to a special tax or assessment for the payment of the interest on and principal of said bonds; and all amounts to be paid to the United States under any such contract between the district and the United States; and said special tax or assessment shall constitute a first and prior lien on the lands against which levied to the same extent and with like force and effect as taxes levied for state and county purposes. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2352. Sale of Bonds.

(Section 44.) Bonds issued hereunder shall be issued, negotiated, and sold by or under the direction of the board of commissioners, but shall never be sold for less than ninety (90) per cent of their par value and accrued interest thereon to date of delivery.

Any bonds issued hereunder may in the discretion of the board of commissioners be issued direct in payment and satisfaction of the contract or purchase price of any irrigation works, canals, water, water rights, or other property constructed or acquired by or for the district, or may be deposited with the United States as in section 9 [§ 2317 herein] provided. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2353. Disposition of Proceeds of Bonds.

(Section 45.) In the event that bonds are sold for cash, they shall be delivered to the county treasurer of the county wherein the office of the dis-

trict is located, who shall deliver them to the purchaser upon receipt of the purchase price therefor and after making a complete record of the same. The said county treasurer shall receive the proceeds of the sale of said bonds from the purchaser, and place the same to the credit of said district; and the same shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. Said proceeds shall be expended for the purpose or purposes for which said bonds were issued and for no other. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2354. Tax or Assessment to Pay Bonds and Interest.

(Section 46.) All bonds and the interest thereon issued hereunder, and all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided, shall be paid by revenue derived from a special tax or assessment levied as hereinafter provided, upon all the lands included in the district, except upon such lands as have been included in such district, on account of the exchange or substitution of water under the provisions of section 36 of this act [§ 2344 herein] if any there be; and all the lands in the district at the time said bonds are issued and all lands subsequently included which are so chargeable under the provisions of this act, shall be and remain liable to be taxed and assessed for the payment of said bonds and interest, and all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided.

It shall be the duty of the board of commissioners of the district in the order or resolution authorizing and directing the issuance of bonds of the district, mentioned in section 40 of this act [§ 2348 herein], to provide for the annual levy and collection of a special tax or assessment upon all the lands included in the district and subject to taxation and assessment as aforesaid, sufficient in amount to meet the interest on said bonds promptly when and as the same accrues, and to discharge the principal thereof at their maturity, or respective maturities, and to meet all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided at the times such payments by such contract become due and payable. Where straight maturity bonds are issued, it shall be the duty of the board of commissioners of the district to create and maintain a sinking fund sufficient to pay and discharge said bonds at maturity. If said bonds shall be issued for twenty years or less, there shall be annually levied for such sinking fund a special tax or assessment as aforesaid, sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if said bonds are issued for more than twenty years, then it shall not be necessary to levy a special tax or assessment for sinking fund until the twentieth year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient to produce a net sum equal to one-twentieth part of the aggregate amount of the principal of the bonds. A certified

copy of such resolution shall be filed with the clerk of the board of county commissioners of each county in which the lands of the irrigation district lie, and the special tax or assessment therein provided for shall be levied and collected as hereinafter prescribed, and when so collected shall by the county treasurer having custody of the funds of the district, be placed in a special fund and used solely for the payment of all amounts due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided, and for the payment of the interest on and principal of said bonds when due so long as any of said bonds or the interest coupons thereto appertaining remain outstanding and unpaid. In the event that for any reason, any special tax or assessment hereinabove provided for cannot or shall not be levied and collected in time to meet any interest falling due on any bonds issued hereinunder, then the board of commissioners shall have the power and authority and it shall be their duty to provide for and pay such interest when due either out of any of the funds in hand in the treasury of the district not otherwise appropriated, or by warrants (which may bear interest at a rate not to exceed six per centum per annum), drawn against the next district tax or assessment levied or to be levied. Said warrants shall be in addition to those mentioned in section 38 of this act [§ 2346 herein].

The board of commissioners shall have power and authority to direct the investment of the funds in any bond sinking fund aforesaid, in interest bearing securities, whenever in their judgment the same may be to the best interest of the district. But all such securities shall be converted into cash in time to meet the principal on the bonds payable from such sinking fund, promptly at their maturity. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2355. Added Lands to Pay a Proportional Share of Bonded Indebtedness.

(Section 47.) Where a district is extended after the construction of works of irrigation, to include other irrigable lands, such included lands shall be chargeable with such proportion of the bonded indebtedness incurred or authorized to be incurred by the district, and such proportion of the indebtedness incurred under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as in section 9 [§ 2317 herein] provided, as the district court shall order as provided in section 24 of this act; and the board of commissioners of the district shall provide for the levy of a special tax or assessment against such included lands on account of said bonds and the interest thereon; and on account of any payments under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided, and said special tax or assessment shall be levied and collected as and in the manner as the special tax or assessment against the lands of the original district on account of the payments under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided, and on account of said bonds and the in-

terest thereon is provided for, levied and collected. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2356. All Lands Chargeable Alike.

(Section 48.) All lands in each irrigation district, except such lands as have been included within such district on account of the exchange or substitution of water, under the provisions of section 36 of this act [§ 2344 herein], shall pay at the same rate for all purposes for which said lands are charged. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2357. Taxes and Assessments—Annual Levy.

(Section 49.) On or before the second Monday in July of each year, the board of commissioners of each irrigation district organized hereunder shall ascertain the total amount required to be raised in that year for the general administrative expenses of the district, including cost of maintenance and repairs, and interest on and principal of the outstanding bonded or other indebtedness of the district, including any indebtedness incurred under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided, and shall levy against each forty-acre tract or fractional forty-acre tract of land in the district (or where lands shall be owned and held in twenty-acre tracts or less, then against each such tract), that portion of the said amount so to be raised which the area of such tract bears to the total area of all the lands in the district.

In the event that the ownership of any forty-acre tract or fractional forty-acre tract of land in the district shall be divided after a special tax or assessment against the same has been levied, each or either of the owners of such divisions shall be entitled to have such special tax or assessment equitably apportioned to and against such divisions so that each such owner shall be enabled to pay such special tax or assessment against his portion of such tract and have the same discharged from the lien thereof. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2358. Conclusiveness of Tax or Assessment.

(Section 50.) In determining the proper and just tax or assessment to be levied against any land for district purposes, the finding of the board of commissioners of the district, in the absence of fraud or mistake, shall be conclusive and final, except as herein otherwise provided. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2359. Notice of Tax or Assessment.

(Section 51.) The board of commissioners of each district shall mail to each tax or assessment payer of the district whose address is known, not later than the first Monday in August, a notice of the amount to be paid by such tax or assessment payer for all district purposes, and the books and records of the district showing all taxes or assessments and the amount charged against each tract of land shall be open at all reasonable hours to public inspection. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2360. Funds for Payment of Each Series of Bonds to be Kept Distinct.

(Section 52.) When more than one series of bonds shall have been issued by a district, the funds for the payment of each series shall be kept

separate and distinct, and when contract is made between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided, the funds for the payment to be made under any such contract shall be kept separate and distinct. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2361. County Treasurer as Custodian of District Funds.

(Section 53.) The county treasurer of the county wherein the office of an irrigation district is located shall be the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of commissioners, except as to payments on bonds and interest, and payments under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 9 [§ 2317 herein] provided, for which no order shall be necessary; such orders shall be signed by the president and secretary of the board and shall bear the official seal of the district. Where such orders are for the payment of money for construction work, the same shall be accompanied by and attached to the written estimate of the engineer in charge of such construction work. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2362. Collection of Taxes or Assessments.

(Section 54.) On or before the fourth Monday in September of each year the board of commissioners furnish the county treasurer in each county shall collect such taxes or assessments at the situate, a correct list of all the district lands in such county, together with the amount of the total taxes or assessments against said lands for district purposes, and the treasurer of each county shall collect such taxes or assessments at the same time and in the same manner as county and state taxes. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2363. Transmission of Funds from Other Counties.

(Section 55.) Where the lands of any district lie in more than one county the district taxes or assessments collected in counties containing less than a majority of the lands shall be transmitted on or before the first day of January of each year by the county treasurer of such county to the county treasurer of the county wherein the office of the district is located. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2364. Delinquent Sale.

(Section 56.) Delinquent sales of land for unpaid taxes or assessments shall be made in the same manner as for state and county taxes in the respective counties where such lands are situated, and the right of redemption shall in all cases be made the same as in cases where lands are sold for state or county taxes. [Amendment approved March 18, 1913; Laws 1913, c. 127, p. 475.]

§ 2365. Proceeds of Sale.

(Section 56a.) That whenever, pursuant to the provisions of section 56 of this act [§ 2364 herein], any lot, tract, piece or parcel of land included within and forming a part of any irrigation district, created under the provi-

sions, of this chapter, or included within any extension of such district, shall be sold by the treasurer of the county wherein such land is situated, in the manner provided by law for the sale of lands for delinquent taxes for state and county purposes, and taxes or assessments of such irrigation district form all or a part of the taxes for which such lands are sold, it shall be the duty of the county treasurer making such sale or sales, to place to the credit of the proper funds of such irrigation district out of the proceeds of such sale or sales, the total tax or assessment of such irrigation district, inclusive of the interest and penalty thereon as provided for by the general laws relating to delinquent taxes for state and county purposes, and whenever any such lands are struck off at such sale, to the county wherein the same are situate, pursuant to the provisions of section 2638 of the Revised Codes of the state of Montana, the county treasurer of such county, must upon the issuance of the certificate of tax sale to said county, issue to said irrigation district, and in its corporate name, a debenture certificate, for the amount of taxes and assessments due to said irrigation district from said lands and premises so sold, inclusive of the interest and penalty thereon, which certificate shall be evidence of and conclusive of the interest and claim of said irrigation district, in, to, against and upon the lands and premises so struck off to said county, at such tax sale, and that from and after the issuance of said certificate, the sum named therein, and the taxes and assessments of said district evidenced thereby shall bear interest at the rate of one (1%) per centum per month from the date of said certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes, or until paid, from the proceeds of the sale of the lands and premises described therein, in manner provided for by section 2682 of the Revised Codes of the state of Montana, and duplicates of such certificates so issued to said irrigation district, shall be filed in the office of the county clerk and county treasurer of said county with the certificate of tax sale of said lands and premises. [Amendment approved March 18, 1913; Laws 1913, c. 127, p. 475.]

§ 2366. Debenture Certificates—Assignment.

(Section 56b.) That the certificates provided for by the preceding section hereof, shall be assignable, and may be sold or negotiated by the board of commissioners of said irrigation district, and the proceeds thereof delivered to and deposited with the county treasury of said county for proper credit to the respective funds of said irrigation district and upon the sale, negotiation or transfer thereof as above provided for, the lien of said irrigation district shall vest in the purchaser thereof and is only divested by the payment to the purchaser or the county treasurer of said county for his use of the sum for which said certificate is issued, and one per cent additional for each month that elapses from the date of such certificate until redeemed as hereinafter provided for. [Amendment approved March 18, 1913; Laws 1913, c. 127, p. 475.]

§ 2367. Redemption of Lands Sold.

(Section 56c.) That upon the redemption of any lands so sold for taxes in the manner provided for by section 2645 of the Revised Codes of the state of Montana, the county treasurer of said county, out of the redemption money, shall pay to the holder or holders of such certificate or certificates, the sums for which the same were issued, with interest as

therein provided to the date of the redemption of said lands. [Amendment approved March 18, 1913; Laws 1913, c. 127, p. 475.]

§ 2368. Sale by Commissioners When Land not Redeemed.

(Section 56d.) That when the lands and premises so sold for taxes and upon and against which the certificates herein provided for have been issued for the taxes and assessments of such irrigation district are not redeemed within the time provided for by section 2645 of the Revised Codes of the state of Montana, it shall be the duty of the board of county commissioners of said county within three (3) months thereafter, to cause said lands and premises to be sold as provided for by section 2682 of the Revised Codes of the state of Montana as amended March 8, 1909, and out of the proceeds of the sale thereof, the county treasurer of said county shall pay to the holder or holders of such certificates, the sum or sums for which the same were issued with interest as therein provided for to the date of said sale of said lands by the board of county commissioners, and no lands and premises so held by any county and against which the certificates provided for by this act have been issued, shall upon such sale be struck off or sold for a less sum than the amount of taxes and assessments of said irrigation district represented by said certificates, inclusive of the interest thereon in addition to the state and county taxes, if any, against the same. [Amendment approved March 18, 1913; Laws 1913, c. 127, p. 475.]

§ 2369. Proceedings Where Land Struck Off to County and not Redeemed.

(Section 56e.) In case the property so assessed for irrigation district purposes is struck off to the county as provided for by law, and certificates of the taxes and assessments of said irrigation district issued thereon as hereinbefore provided for, and the said lands and premises be not redeemed before the next annual assessment for irrigation purposes shall become delinquent thereon, then and in that event, whether said lands and premises be again sold by the county treasurer of said county or the sale thereof adjourned as provided for by sections 2678-79 of the Revised Codes of the state of Montana, like certificates for each year's irrigation district taxes and assessments shall be issued against said land and shall be included in and satisfied by any redemption thereof with interest as hereinbefore provided for and shall in like manner be paid from the proceeds of sale of said lands by the board of county commissioners, if the same be not redeemed as provided for by law. [Amendment approved March 18, 1913; Laws 1913, c. 127, p. 475.]

§ 2370. Duty of County Treasurer.

(Section 56f.) That in all cases where lands and premises included within and forming a part of any irrigation district, formed under this chapter, shall have heretofore been sold for delinquent taxes in the manner provided for by law and the same have been struck off to the county in which said lands are located, the treasurer of said county shall within thirty (30) days after the passage and approval of this act, issue to said irrigation district like certificates for taxes and assessments of said irrigation district, included within and forming a part of the total tax for which said lands and premises were so struck off and sold to such county and for all taxes and assessments of said irrigation district, levied and assessed

against said lands and premises, subsequent to the first sale thereof, which then remain delinquent, and file like duplicates thereof, in manner and form as hereinbefore provided for, and all of the preceding provisions of this act shall apply with like force and effect to such certificates. [Amendment approved March 18, 1913; Laws 1913, c. 127, p. 475.]

§ 2371. Liability of County Treasurers.

(Section 57.) The county treasurer to whom district funds or securities are intrusted shall be liable on his bond for the safekeeping of said funds and securities, and such funds shall be properly divided into the respective funds for which district taxes or assessments were levied; that is to say, United States contract fund; bond principal and interest fund; sinking fund to redeem bonds; maintenance fund; construction fund; and general fund. The construction fund shall be available for the payment of the purchase price of all works, water rights, or other property purchased by or for the district and all expenses incident thereto; as well as for the payment of the cost of construction of works, including cost of engineering, superintendence, and other expenses incident thereto. All warrants issued for preliminary and organization expenses and all administrative expenses shall be paid from the general fund. The county treasurer is authorized to receive in lieu of cash interest coupons maturing within the year in payment of any tax or assessment levied for payment of interest on bonds, and the county treasurer at any time upon the order of the board of commissioners of the district, shall turn over to said board any bonds or securities held by him and required to be delivered to said board, in accordance with the provisions of this act.

All interest coupons so received or otherwise paid and all bonds of the district upon the payment thereof, shall be immediately canceled and retained by the county treasurer as vouchers. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2372. Sale or Transfer of Land.

(Section 58.) Where any lands in any district are sold or transferred either by deed, mortgage, foreclosure sale or otherwise, such sale or transfer shall include the water belonging to and appurtenant to the land, whether or not the same is expressly stated in the deed, instrument of transfer or decree, and such land shall be liable to special tax or assessment the same as if such sale or transfer had not been made. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2373. Appeals—Consolidation of.

(Section 59.) If more than one appeal shall be pending at the same time concerning similar contests in this act provided for, such appeals shall be consolidated and tried together. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2374. Unsubstantial Errors Disregarded—Rules of Procedure—Costs.

(Section 60.) The court hearing any of the contests or proceedings herein provided for shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure which are not inconsistent with the provisions of this act

are applicable to all actions or proceedings herein provided for. The costs of any such hearing or contest may be allowed and apportioned between the parties or taxed to the losing parties in the discretion of the court. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2375. Liability of Officers.

(Section 61.) For any willful violation of any express duty hereinunder on the part of any officer herein named, he shall be liable upon his official bond and be subject to removal from office by proceedings brought in the district court of the county wherein the office of the board of commissioners of the district is located, by any tax or assessment payer of the district. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2376. Surplus and Construction Funds.

(Section 62.) In the event of any money remaining in the construction fund after the completion of any district project, the same may be transferred to an appropriate fund for the redemption of the outstanding bonds of the district. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2377. Transfer of Funds.

(Section 63.) The board of commissioners shall have power to transfer money from any one fund to any other fund, except that no money shall be drawn from the sinking fund or construction fund, except as specifically provided in this act; provided, that no money in the United States contract fund shall ever be diverted to any other fund. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2378. Written Consent of Owners—Acknowledgment and Recording.

(Section 64.) Whenever any written consent is required to be given by or obtained from the owner or owners of any lands by any of the provisions of any of the sections of this act, such written consent must be acknowledged before some officer authorized to take acknowledgments, and shall be filed and recorded in the office of the clerk and recorder of the county in which such lands are situated, and a certified copy thereof must be filed in the office of the clerk of the court in the county in which the proceedings for the organization of such district were instituted, but the provisions of this section shall not apply to any petition provided for by this act; and all such petitions may be signed in any number of original parts with the same effect as though all signatures had been affixed to one instrument. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2379. Inspection of Books by State Examiner.

(Section 65.) All books, accounts, records, contracts and securities of every kind pertaining or belonging to any district shall be subject to examination by the state examiner, and it is hereby made his duty to examine the same as provided by law for the examination of the affairs of county officers, and in case any district is appointed fiscal agent of the United States or by the United States is authorized to make collections for or on behalf of the United States in connection with any federal irrigation project, such board of commissioners or the secretary thereof shall at any time

allow any officer or employee of the United States, when acting under the order of the Secretary of the Interior, to have access to all books, records and vouchers of the district which are in possession or control of the secretary or of said board. [Amendment approved March 10, 1915; Laws 1915, c. 145, p. 359.]

§ 2380. Interpretation of Act.

(Section 66.) The object of this act being to secure the irrigation of lands of the state and thereby to promote the prosperity and welfare of the people, its provisions shall be liberally construed so as to effect the objects and purposes herein set forth. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

§ 2381. Repeal of Prior Acts—Saving Clause.

(Section 67.) Except as hereinafter provided, the provisions of sections 2309 to 2402, both inclusive, of Title X, Part III, of the Revised Codes of Montana of 1907, are hereby repealed. Provided, however, that where any irrigation district is now in process of organization under the provisions of said sections of the Revised Codes, said organization may be completed under said provisions, but after said organization is completed said district shall be governed by the provisions of this act; and provided further, that where any irrigation district shall have already been organized under the provisions of said sections of the Revised Codes and shall have issued bonds or entered into any contract of purchase or construction, nothing herein contained shall be construed as affecting the rights of the holders of said bonds or of any person, persons, corporation, or association, party or parties to any such contract with said district, under or by virtue of any of the provisions of said sections of the Revised Codes. If a majority of the holders of title, or evidence of title, to lands included in the district heretofore organized, or being organized, under the provisions of said sections 2309 to 2402, both inclusive, of the said Revised Codes, said holders of title, or evidence of title, also representing a majority in acreage of irrigable lands of said district shall petition under the provisions of this act for the organization of a new district, including not less than four-fifths of the irrigable lands embraced within such districts so organized, or being organized, and shall pray for an order disorganizing such district and vacating all proceedings therein, the court shall have jurisdiction to proceed under this act to organize such new district, and in making its final order creating such new district, shall also make an order vacating and disorganizing the old district. All money or property belonging to such old district shall be and become the money and property of such new district. Should any lands included in the old district not to be included in the new district, the commissioners of the latter shall pay to the owner or owners of such land their just proportion thereof on the basis of the last assessment made; and provided, further, that all acts heretofore done by any board of county commissioners of any county of this state in connection with the organization of any irrigation district under the provisions of the foregoing sections of said Revised Codes shall be and are hereby ratified, confirmed and declared valid, and of full force and effect. [Amendment approved March 18, 1909; Laws 1909, c. 146, p. 254.]

Sections 2303-2402, both inclusive, were, with certain reservations, repealed by the act of 1909. *Billings Sugar Co. v. Fish*,

40 Mont. 256, 272, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973, 106 Pac. 565.

§ 2382-2402. [Repealed.]

By act approved March 18, 1909; Laws 1909, c. 146, p. 288.

DRAINAGE DISTRICTS.*

ARTICLE I.

ESTABLISHMENT OF DRAINS IN GENERAL.

§ 2403. When Drains may be Constructed.

(Section 1.) That drains may be located, established, constructed and maintained, and drains and watercourses may be cleaned out, straightened, widened, deepened and extended, whenever the same shall be conducive to the improvement of agricultural lands, or to public health, convenience or welfare. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 378.]

The "drainage district law" is valid.
Billings Sugar Co. v. Fish, 40 Mont. 256,
282, 20 Ann. Cas. 264, 26 L. R. A. (N. S.)
973, 106 Pac. 565.

Editorial Notes.

Procedure for establishment of drains.
60 L. R. A. 161.

§ 2404. Definition of Word "Drain."

(Section 2.) The word "drain" wherever used in this act shall be deemed to include any watercourse or ditch, opened or proposed to be opened, and made for the purpose of drainage, and any artificial ditch or drain, levee, dike or barrier or tile or wooden drain proposed or constructed for such purpose. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 378.]

§ 2405. Appointment of Drain Commissioner—Term of Office—Oath and Bond.

(Section 3.) The board of county commissioners of each organized county in this state, which may desire to avail itself of the benefits of this act, shall, at any regular meeting, appoint one drain commissioner, whose term of office shall end on the first Monday of January, 1917, or every second year thereafter, except, that any appointment made under the old law, prior to the time that this act becomes effective, shall hold until the expiration of the term herein specified. Such board of county commissioners shall, at their regular meeting in September, 1916, and every second year thereafter, appoint one drain commissioner whose term of office shall be two years, and shall begin on the first Monday of January following his appointment. In case of vacancy in the office of the county drain commissioner the same may be filled by appointment by the board of county commissioners at any regular or special meeting and of which election they shall file the certificate with the county clerk and recorder and the person so appointed shall hold his office until his successor is appointed and qualified. Every county drain commissioner shall within ten days after his appointment take, subscribe and file with the county clerk and recorder the oath of office required by the constitution of this state and shall also within the same time execute and file with such clerk and recorder a bond to the county in the penal sum of ten thousand dollars to be approved by the board of county commissioners, conditioned upon the faithful discharge of the duties of his office. It shall be the duty of the county clerk and

*This title, embracing sections 2403-2496 of the Revised Codes, was previously amended in 1909: See Laws 1909, p. 231.

recorder, upon the appointment of any county drain commissioner to make report thereof to the Secretary of State, giving also the date he qualified and entered upon the discharge of his duties. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 378.]

§ 2406. Jurisdiction of Drain Commissioner.

(Section 4.) The county drain commissioner shall have jurisdiction over all drains within his county, including those heretofore established and now in process of construction, except that in all cases where the entire drain shall be laid in one county, and the benefits to be derived therefrom and the assessments for its construction shall extend to lands situated in one or more adjoining counties, then all such drains shall be laid by the commissioners of such counties acting jointly, and all their proceedings shall be had under the provisions of this act regulating the construction of drains traversing more than one county. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 379.]

§ 2407. Drains in Incorporated Cities.

(Section 5.) In case it is proposed to run a part or parts of a drain through any incorporated city or town, all of such drains shall be located, established and constructed, and the assessment for its construction made by the county drain commissioner in the same manner as herein provided for the construction of other drains. Whenever such part or parts of said drain shall be located within any street, highway or public place of any town or city, then a resolution adopted by a majority vote of the council of said town or city granting leave to construct such drain therein, and designating the name of the street or pointing out the alley or other public place to be traversed by such drain, shall be sufficient release of the right of way, and shall be deemed a sufficient conveyance under the provisions of this act, and said council may permit the construction of an open drain if such consent be expressly set forth in such resolution. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 379.]

§ 2408. Duties of Drain Commissioner—Records.

(Section 6.) It shall be the duty of each county drain commissioner to make and keep a full financial statement of each drain laid out by him. The county drain commissioner shall also make and keep in his office, in a book to be provided for that purpose, a complete record of each drain laid out or applied for under his supervision, under the provisions of this act, which record shall include a copy of the application for the laying out of the drain, of the minutes of the survey, of the releases of the right of way where the same has been released, together with the minutes of his doings, of his orders of determination of the necessity for, and of the establishing the drain, and his assessments. Where special commissioners have been called it shall also contain a copy of the application to the district court, of the return of the special commissioners, and of all other papers in his office necessary to show a complete history of each drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 380.]

§ 2409. Releases of Rights of Way.

(Section 7.) Drain commissioners may take acknowledgments of releases of right of way and administer oaths in all proceedings in any way

pertaining to drains under this act. A simple form of release or easement of right of way and damages, that shall set forth by reference to the survey of the drain, or by other convenient description, the particular land intended to be released and signed and acknowledged by the person having the right to convey, or release shall be deemed a sufficient release or easement under the provisions of this act. All releases for rights of way shall be deemed to include sufficient ground on each side of the center line of such drain for the deposit of the excavation therefrom. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 380.]

§ 2410. Report of Drain Commissioner.

(Section 8.) Every county drain commissioner shall make an annual report to the board of county commissioners on the second day of its December session. This report shall include complete and concise statements concerning all drains, or parts of drains, constructed, finished or begun during the year then ending; all repair and other work done for maintaining the several drains in proper running order; condition of each drain, and any other information necessary to make such report complete. This report shall also include an estimate of the probable amount of funds necessary and required for the inspection, superintending, repairing, protecting and maintaining of each and every drain under his supervision for the coming year. Such estimate shall be determined after a careful inspection of each and every drain shall have been made by him or at his direction. The funds shown in such estimate for the several drains, shall be provided by special assessments levied in the several drainage districts as hereinafter provided for. Each county drain commissioner shall be liable on his bond for any gross neglect of duty or any misapplication of moneys coming under his control as such drain commissioner. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 380.]

§ 2411. Eligibility to Office of Drain Commissioner.

(Section 9.) No person holding the office of county commissioner or county clerk and recorder shall be eligible to the office of county drain commissioner, and any county drain commissioner accepting the office of county commissioner or county clerk and recorder shall thereupon be considered as having vacated the office of county drain commissioner. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 381.]

ARTICLE II.

LOCATION OF DRAINS.

§ 2412. Application for Location of Drain—Signatures—Liability of Applicants.

(Section 1.) Before the commissioner takes any action toward locating or establishing any drain, there shall be filed with him an application giving a general description of the beginning, the route and the terminus thereof, signed by not less than ten freeholders of the county or counties in which such drain or the lands to be drained thereby and to be assessed therefor may be situated; also that five or more of said signers shall be owners of lands liable to an assessment for benefits in the construction of such drain; provided, that where there are five or less property owners

liable to assessments, not less than half of such owners of lands so liable, shall be necessary upon such application. And in case any county drain commissioner shall directly or indirectly solicit signatures to an application for any drain he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed fifty dollars or imprisoned in the county jail not to exceed ninety days or be punished by both such fine and imprisonment in the discretion of the court, and the office of such drain commissioner shall be deemed vacant, and the drain commissioner, so convicted, shall be incapable of again holding the office of county drain commissioner. Such applicants shall be jointly and severally liable for all costs and expenses in case the county drain commissioner upon examination or upon examination and survey shall determine that the same is unnecessary or impracticable or in case the proceedings shall be dismissed upon application of a majority of the petitioners. If the persons signing such application shall refuse to pay such costs and expenses the county drain commissioner shall bring suit in a court of competent jurisdiction and collect such costs and expenses with costs of suit. If upon the presentation of such application the county drain commissioner shall deem the financial responsibility of the applicants insufficient he shall have the right to return such application for additional signatures. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 381.]

While the laying out of a public drain across farm lands may possibly cause a depreciation of their value, by reason of impairing water rights appurtenant thereto, this does not, of itself, justify the issuance of an injunction to prevent the construction of the drain, but is an element to be considered in assessing damages to the owner in proceedings had under this and the following sections of

the drain statute. *Summers v. Sullivan*, 39 Mont. 42, 44, 101 Pac. 166.

A complaint against a drain commissioner, to restrain him from proceeding with the establishment of a public drain over the lands of the plaintiffs, is insufficient unless it shows a clear right to relief. *Summers v. Sullivan*, 39 Mont. 42, 46, 101 Pac. 166.

§ 2413. Proceedings upon Application—Survey.

(Section 2.) Upon the filing of such application the county drain commissioner authorized to act thereon shall as soon as practicable thereafter proceed to personally examine the route of the proposed drain, and if in his opinion it is necessary and conducive to the improvement or reclamation of agricultural lands, to the public health, convenience or welfare, that the application should be granted, he shall, as a means of determining the practicability thereof, make a survey, map and estimate of the cost of the proposed drain, or cause the same to be made by a competent civil engineer. After such survey and estimate are made, if he shall find such drain to be practicable, he shall within ninety days make his first order of determination in writing in accordance therewith, therein particularly naming such drain by which it shall thereafter be known and shall establish the commencement, route, and terminus of said drain, and the width, length and depth thereof, and shall set survey or grade stakes not more than one hundred feet apart. For such purpose he shall have the right to enter upon any such lands traversed by the route of the proposed drain, or any land that will be benefited by such drain. In locating such drain the county drain commissioner shall not be limited or confined to the precise starting point, route or terminus set forth in the application. The record or minutes of the survey shall show the line and route of the drain, the points where the line of the drain crosses the boundary lines of each owner's land and

the length thereof upon his land, and, provided the drain is to be an open drain, the width of surface excavation that will be required in its construction and shall also show by words, or letters and figures, the width of ground that will be required for the disposition of earth, and every release of right of way shall be deemed to include the extreme width thus shown. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 382.]

§ 2414. Owners may Construct Drain.

(Section 3.) If at any time after the county drain commissioner has issued his first order of determination, establishing such drain as provided in the preceding section, and before the letting of any contract for constructing the same, all the owners of the lands through which, or for the benefit of which such drain is located, shall, by themselves, their agents or attorneys pay to the county drain commissioner all the costs and expenses thus far incurred by him, and shall severally or jointly enter into a contract, with good and sufficient sureties and in such sum as the county drain commissioner may require, to construct so much of said drain, and on such route, and of such dimensions as the said commissioner may, in such contract determine, and to pay all expenses necessary to be incurred in the construction of same, then the county drain commissioner may so contract with such owner or owners and such drain, when so finished and accepted shall be certified by the county drain commissioner as a drain lawfully constructed in pursuance of the provisions of this act, and shall be recorded in the same manner as other drains. If any such contracts are not fulfilled by the time limited therein, the county drain commissioner may contract with other parties for the completion of the work, and the parties so in default, and their sureties, shall be liable for all costs and expenses attending such default. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 382.]

§ 2415. Application for Assessment of Damages for Right of Way—Special Commissioners.

(Section 4.) If within thirty days after the making of such first order of determination, all the persons through whose lands the proposed drain is to pass shall not have executed a release of the right of way, and all damages on account thereof, the county drain commissioner shall, as soon as practicable, make application to the district court of the county in which such lands are situated, for the appointment of three disinterested special commissioners, who shall be resident freeholders of the county, but not of the district or districts traversed by such drain, to determine the necessity therefor, and for the taking of private property for the use and benefit of the public for the purpose thereof, and the just compensation to be made therefor. Such application shall be in writing and shall set forth:

First. The fact that an application for a drain was made and when, filing with said court a certified copy of such application, also giving the route, survey and specifications of said drain as set forth in the first order of determination.

Second. That an order determining the necessity for such drain was made by the county drain commissioner, giving the time when such order was made, in accordance with such route, survey and specifications as above set forth.

Third. (1) The several descriptions of tracts of lands with the names of the owner or owners of every such tract who have refused or neglected to execute a release of right of way and damages in any way arising or incident to the opening or maintaining of the said proposed drain. If any such owner is a minor, incompetent person, or unknown person, or non-resident of the county or counties, the application shall so state; (2) It shall not be necessary to set forth in said application to the district court the names of the several owners nor the descriptions of the several tracts or parcels of lands liable to an assessment for benefits, in case the drain applied for should be located and established, except those who have not released the right of way and through whose land the drain passes; nor shall the same be included in the citation issued from the district court. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 383.]

This section, though mandatory in form, does not require the drain commissioner, in his application to the district court for the appointment of special commissioners, to state the names of the land owners accurately, under pain of having the proceedings held void for his failure to do so; the mere misnaming of a party, or a failure to give the name of a particular nonconsenting land owner, does not in-

validate the whole proceeding. *Summers v. Sullivan*, 39 Mont. 42, 45, 101 Pac. 166.

Where a right of way for a public drain is sought to be secured, under the drain statute, over certain lands, the wife of the owner, who has only an inchoate right of dower in his lands, need not be made a party to the proceedings. *Summers v. Sullivan*, 39 Mont. 42, 46, 101 Pac. 166.

§ 2416. Hearing of Application—Minors and Incompetents.

(Section 5.) The court to whom such application is made shall make an examination at the time of such application of all the proceedings of the county drain commissioner so far as had, and if such proceedings be found to be in accordance with the statute, such court shall at once appoint a time and place of hearing upon the application, which time shall be fixed not less than fifteen nor more than forty days thereafter and the court shall issue a citation to all persons whose lands are traversed by such drain, who have not released the right of way, and all damages on account thereof, to appear at the time and place designated in said citation, and be heard with respect to such application, if they so desire, and show cause, if any there be, why said application should not be granted, and any error or errors that may have been made in any of the proceedings thus far shall be raised and taken advantage of at such time and before such court, and if not so raised and taken advantage of at such time and before such court, the same shall be deemed to have been waived by all persons cited to appear under this notice. If any person on whom such service is to be made is a minor or an incompetent person who resides in this state, such service shall be made as herein provided on his guardian, or if none, then on the person who may for such purpose be appointed special guardian and also on the person who has the care of, or with whom such minor or incompetent person resides. In case any person whose lands are traversed by said drain is a minor or an incompetent person, and has no guardian, the said court or the judge of said court shall appoint a special guardian, to appear for and attend to the interests of such minor or incompetent person and all notices to be served in the process of the proceeding shall be served on such special guardian. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 384.]

§ 2417. Citation and Service Thereof—Publication Against Nonresidents.

(Section 6.) The citation shall recite so much of the premises as will show jurisdiction, giving a description of the land traversed by such drain,

and shall be addressed to all owners by name, except in case of nonresidents of the county whose names are not known. It shall describe the drain by its commencement, terminus and general course, and shall set forth that land owned by the persons to whom it is addressed will be crossed by such drain and may be subject to assessment for its construction, and that a description and survey of such drain is on file with the court issuing such citation, and describe the land to be taken. Such citation shall be personally served by the county drain commissioner or some other competent person, upon every person whose lands are traversed by the said drain, who has not released the right of way and all damages on account thereof, and who resides within the county, by delivering to him or her a copy thereof or by leaving the same at his or her residence with some person of suitable age and discretion, who shall be informed of its contents. In all cases of personal service at least ten days shall intervene between the day of service and the day of hearing, and the court issuing such citation shall require proof of such service by affidavit showing the time, place and manner of such service. Citation shall be served upon cities and incorporated towns by leaving a copy thereof with the mayor and city or town clerk; upon the state by leaving with or mailing a copy thereof to the state land commissioner; upon railroad companies by leaving a copy thereof with the agent of any ticket or freight office of the company operating such railroads, and upon other corporations by serving the same upon the officer or person designated by law in cases of serving civil process. If any lands involved are owned by nonresidents of the county or counties, a copy of the citation so far as it affects such lands shall be published in some newspaper published and circulated in the county in which such lands are located, once a week for three weeks previous to the day of hearing and mailing to such nonresident owner at his place of residence, if known, which shall be deemed to be sufficient notice to all such parties. The first publication of such notice shall be at least fourteen full days before the day of hearing, and proof of its publication shall be made as above provided in the case of personal service. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 384.]

§ 2418. Proceedings at Hearing.

(Section 7.) The court to whom such application is made shall at the time and place fixed in the citation, or at any time to which it may adjourn, and upon proof of service when required, proceed to hear all persons whose lands are traversed by said proposed drain, and all such persons may show cause against the prayer set forth in the application, and may disprove any of the facts alleged therein, and may raise any and all objections to any errors or irregularities made in the proceedings had thus far, if any, and the said court shall hear the proofs and allegations of the parties, and the objections so made to the proceedings, if any there be, and if no sufficient cause is shown against granting the prayer set forth in said application the said court shall make an order appointing three disinterested and competent resident freeholders of said county not residents of the district traversed or benefited by the drain, as special commissioners to ascertain and determine the damages or compensation to be allowed to the owners or parties interested in the real estate proposed to be taken for the right of way for such drain. Such court shall immediately upon the appointment of such commissioners, and with the concurrence of the county drain com-

missioner, appoint a time and place, such time to be not less than five nor more than fifteen days thereafter at which such special commissioners shall meet the county drain commissioner and other parties, who have not released the right of way, to consider the matters and things with respect to which they have been appointed, and the said court shall make public announcement thereof, and thereupon the proceedings shall be deemed a continuing proceeding, and no further notice of the time and place of hearing shall be required, and such appointment and announcement shall be made a part of the record in the case; provided, that if it shall appear at such hearing that all parties have not been duly notified, the court may adjourn such hearing for a period sufficiently long to enable the county drain commissioner to duly notify such parties in the manner heretofore provided and it shall not be necessary to again notify the parties who have received legal notice in the first instance. The district court shall, if necessary, allow the county drain commissioner to amend his application at any time before the appointment of special commissioners and in case there is shown to be error in the proceedings of the county drain commissioner the district court shall adjourn the hearing for sufficient time to allow the said commissioner to correct such error or errors; provided, that application to establish the drain is shown to be sufficient under the statute. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 385.]

§ 2419. Appointment of Special Commissioners.

(Section 8.) If the court shall have granted the prayer set forth in the application, such court shall proceed to deliver to the county drain commissioner a copy of the order appointing the special commissioners, and fixing the time and place of the first meeting of said commissioners, and the drain commissioner shall deliver a copy of such order to each of said special commissioners. In case any such special commissioner neglects or refuses to meet at such time and place with said county drain commissioner, the said county drain commissioner shall adjourn such day of meeting for a period not to exceed thirty days, and he shall give public notice by proclamation of the date, time and place of such adjourned meeting, and he and the parties who appear at the hearing before the court in obedience to the aforesaid citation may appoint some competent person to act as commissioner in lieu of the special commissioner so neglecting or refusing to meet at the time and place designated, which appointment shall be in writing and signed by the drain commissioner and said parties and filed in the court appointing such special commissioners in the first instance. If the drain commissioner and said parties cannot agree upon a special commissioner to fill said vacancy then the county drain commissioner shall, as soon as practicable, make application to the judge of the district court, who shall appoint a special commissioner to fill such vacancy. The parties appearing in obedience to the citation of the court hereinbefore mentioned shall have notice of the time and place when and where such vacancy will be filled by the judge of the district court. Said special commissioners shall be sworn to faithfully discharge the duties of special commissioners in the matter in which they are called to act, and to well and truly determine the necessity for such drain, and the taking of private property for the use and benefit of the public for the purpose thereof and the just compensation to be paid therefor. The said special commissioners, with the county drain commissioner and the

other parties in interest who may be present, who have not released the right of way for said proposed drain, shall meet at the time and place ordered by said court and proceed at that time, or at any time to which they may adjourn, to view such premises, and for such purpose they shall have the right to enter upon any lands traversed by the route of the proposed drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 386.]

§ 2420. Duties of Commissioners—Compensation for Property.

(Section 9.) The said special commissioners shall hear the proofs and allegations of the several parties in interest, and shall ascertain and determine the necessity for such drain, and for the taking of such private property for the use and benefit of the public, the purpose thereof, and the just compensation to be made therefor in each case, which compensation shall be determined without reference to any benefits that may accrue to the land in consequence of the construction of such proposed drain. There shall be produced by the county drain commissioner at such hearing, the original application for the laying out of such drain, and the minutes of his action thereon, so far as had, also copies of the first order of determination and the application to the district court, with the citation annexed and a copy of all proceedings in the district court, a copy of the map, and estimate of cost signed by the civil engineer and the order appointing the special commissioners, as the case may be. The special commissioners may adjourn such hearing from day to day, for any cause, not exceeding in all thirty days, announcement of which adjournment shall be then and there publicly made. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 387.]

§ 2421. Return of Commissioners.

(Section 10.) The said special commissioners shall within forty days from the date of their first meeting make a return in writing of their hearing, determination and of their several awards. The special commissioners shall file their return with the county drain commissioner, who shall examine the same, and if he shall find such return not to be in substantial conformity with the statute, he shall return the same to the special commissioners for correction. The special commissioners shall thereupon proceed to correct their return, and file the same with the county drain commissioner within five days. When the county drain commissioner shall find such return to be without material error, he shall file the same with the other papers in his possession pertaining to such drain. Such return shall be deemed sufficient release of the lands necessary to be used for such drain, and upon which damages are awarded in the county in which they are situated, in trust to and for the uses and purposes of drainage, and for no other use or purpose whatever; provided, that no appeal therefrom is taken as hereinafter provided. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 388.]

§ 2422. Dismissal of Proceedings When Drain Unnecessary.

(Section 11.) In case the special commissioners shall decide such drain to be unnecessary they shall so state in their return, and the county drain commissioner shall thereupon dismiss the proceedings at the cost of the applicants, and no further application for the same shall be entertained

within one year thereafter. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 388.]

§ 2423. Release of Right of Way.

(Section 12.) If at any time before the appointment of special commissioners provided for in this act or at any time before the filing of their return and award of damages, all of the parties through whose lands the proposed drain is to pass shall execute a release for right of way, and all damages on account thereof, then all proceedings for the appointment of special commissioners and all actions taken by them after their appointment, shall be discontinued and void, and the county drain commissioner shall proceed as if no application for special commissioner had been made, except that the per diem and expense of such special commissioners, up to the time that their services are discontinued shall be considered part of the expense of said drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 388.]

§ 2424. Payment of Assessment for Damages.

(Section 13.) The county drain commissioner shall deduct the award of damages from the assessment, when made, on the tract which includes the right of way of said drain. In case the award of damages shall exceed the assessment of benefits, the county commissioners shall draw orders on the county treasurer, for the amounts awarded in the return of the special commissioners in excess of assessments, describing in each order the lands in payment whereof it is drawn, and before such drain shall be constructed such order shall be tendered by the county drain commissioner to the party entitled thereto; provided, that if the owner of any lands upon which damages have been awarded in excess of assessments, be a nonresident of the county, or be unknown, or in case of a minor or otherwise incompetent person, such order shall be deposited with the county clerk and recorder, payable to the owner of such description of land upon which such damages were awarded. Such order shall be held by such clerk and recorder and be delivered by him to the owner of such lands when called for or otherwise legally demanded, and the same shall thereby be deemed to have been lawfully tendered to the owner of such lands. It shall be the duty of the county treasurer at any time upon presentation to him of any such drain order drawn for the payment of such right of way or damages to pay the same out of any moneys in his hands belonging to the general fund of such county and refund such amount out of the first moneys collected by him on account of such drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 389.]

§ 2425. Refusal of Tender of Damages.

(Section 14.) If the owner of any lands upon which such damages have been awarded in excess of assessments shall, upon the tender of such order to him, refuse to accept the same, the county drain commissioner shall make, such tender in lawful money, and for that purpose he shall be authorized to indorse such order and present the same to the county treasurer for payment, and it shall be the duty of such treasurer to pay such order as hereinbefore provided. If, however, there shall be no money in the general fund of such county treasury, the county drain commissioner shall be authorized to have such order discounted, wherever he may be able to do

so; provided, such discount shall not be more than at the rate of eight per cent, and he shall charge the amount of such discount to the expense and cost of such drain, and the county commissioner shall draw an order therefor. The county drain commissioner shall thereupon make to such owner a tender in lawful money of the amount awarded to him in excess of the apportionment of benefits, and if he shall refuse to accept such money, the county drain commissioner shall deposit the same with the county treasurer, taking duplicate receipts therefor, one of which he may retain, and the other he shall file with the county clerk. Such money shall be held by such treasurer and be delivered by him to such owner when called for or otherwise legally demanded. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 389.]

§ 2426. Construction of Drain Along Railroad Right of Way.

(Section 15.) Drains may be laid along the line of any railroad within its right of way; provided, such drain shall not be to the injury of the roadbed. Whenever it is proposed to construct a drain along the line, and within the right of way of any railroad, and the company owning or operating such road shall refuse or neglect to permit such drain to be constructed or release the right of way therefor within the time prescribed in this act, such release shall be obtained in the same manner as is provided in this act for obtaining the release to private lands; provided, that no drain shall be constructed along the line of any railroad without the consent of the company owning or operating such road, if it shall appear to the special commissioners that such drain, can equally well be laid on private lands. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 390.]

§ 2427. Construction of Drain Across Railroad Right of Way.

(Section 16.) Whenever it is necessary to run a drain across the right of way or roadbed of any railroad, the same proceedings shall be had throughout, in all respects, as in cases provided in this act for obtaining private lands for the construction of drains, except as hereinafter provided. It shall be the duty of the railroad company when notified by the county drain commissioner so to do, to make and maintain the necessary opening through said roadbed, by building and maintaining a suitable culvert, or to install the necessary temporary bridge, or other means of supporting the track, so that the drain may be constructed through said roadbed, in case of a blind drain. Notice in writing to make such opening and to construct such culvert, or to install such temporary bridge, or such other means of supporting the track, shall be served upon such railroad company by leaving a copy thereof with the ticket or freight agent or general officer of such railroad company, at least thirty days before such railroad company shall become liable. Such railway company shall be reimbursed for the actual expense involved in such work by warrants drawn on the drain fund of said drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 390.]

§ 2428. Refusal of Railroad Company to Construct Culvert.

(Section 17.) In case such railroad company shall refuse or neglect to comply with the provisions of the preceding section, it shall be liable to a penalty of ten dollars for each day's refusal or neglect to make such open-

ing and construct such culvert. The county attorney of the county in which said railroad company shall have refused or neglected to comply with the provisions of the preceding section shall, upon complaint being made by the county drain commissioner, bring suit to collect such penalty or fines, and it shall be his duty to prosecute the same to a final determination in any court having competent jurisdiction. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 390.]

§ 2429. Construction of Drain Along Highway.

(Section 18.) Drains may be laid along and within the limits of or across any public highway; provided, that when it is proposed to construct a drain in whole or in part along a public highway, it shall be necessary for the county drain commissioner to obtain from the county commissioners a release of right of way of said drain, and for all damages on account thereof. In case such release is not executed within the time prescribed in this act, such release shall be obtained in the same manner as is provided in this act for obtaining private lands. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 391.]

§ 2430. Construction of Drain Across Highway.

(Section 19.) When any drain crosses a highway, the cost of constructing the necessary bridge or culvert shall be charged in the first instance as part of the cost of construction of such drain, after which such bridge or culvert shall be maintained as a part of the highway. When an open drain passes along a highway, there shall be constructed at least one bridge or passageway across such drain, connecting the highway with each inclosed field and with each farm house entrance, which bridge or passageway shall be constructed and maintained out of the funds hereinafter provided for the construction and maintenance of such drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 391.]

§ 2431. Construction of Blind Drains.

(Section 20.) The county drain commissioner may order the construction of blind drains by the use of drain tiles, wooden box, vitrified clay, concrete or other kind of pipe, when such construction is most suitable. When any such blind drain is to be constructed across any land, so that the surface of the land can be restored, the special commissioners in making their award of damages shall take that fact into account. Any person through whose land an open drain has been constructed, may make a written request to the county drain commissioner to be permitted to tile and cover with earth the whole or any part thereof, that may traverse his land, and the county drain commissioner may grant such request but in doing so he shall prescribe the size of the tile, pipe or wooden box to be used. When blind drains are constructed the entrance thereto shall be substantially protected from driftwood and debris. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 391.]

§ 2432. Extending Drain into Lake or Other Body of Water.

(Section 21.) Drains may be laid or extended into or along or from any lake or other body of water surrounded wholly or in part by a swamp, marsh or other lowlands for the general purpose of drainage contemplated by this act but not so as to impair the navigation of any navi-

gable water. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 391.]

§ 2432a. Contract for Drainage Ditches.

(Section 22.) Whenever in the judgment of the county drain commissioner a district can be drained to the best advantage or most economically through any irrigating ditch, drain or waterway used for other purposes by any individual corporation or other drainage district, such commissioner may contract with such individual corporation or other drainage district for draining such district or for diverting the water before the same reaches the district to be drained. Before making such contract the county drain commissioner shall publish a notice in a newspaper of general circulation in the district, giving the exterior boundaries of the district to be drained and the approximate cost of the proposed contract to each acre lot or parcel of land to be benefited. Such notice shall designate a time and place for a public hearing and said notice shall be published once a week for three weeks, preceding such hearing. If the owners representing more than one-half of the lands to be benefited protest against the proposed contract, or if it appear that such contract is not to the best interest of the district or that owners of land in the district will undertake to provide drainage at the same or less expense to the district, such contract shall not be made. If none of the foregoing objections or conditions are disclosed at the hearing the commissioner may enter into a contract with any individual corporation or other drainage district for the draining of such district through any ditch, canal or drain belonging to such individual corporation or district. Payment on any such contract shall be made and assessments shall be levied and collected in the same manner as provided in this act for other districts. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 392.]

§ 2432b. District Partly Within Incorporated City or Town.

(Section 23.) When all or any portion of any drain district is included within the limits of any incorporated town or city the land in such district belonging to such town or city including streets, alleys and parks shall be subject to assessment the same as other lands. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 392.]

§ 2432c. Appeal to District Court.

(Section 24.) Any owner of lands taken for right of way for a drain who is dissatisfied with the award made by the special commissioners under this article, may appeal from such award to the district court, and such appeal shall be taken, tried and determined as are appeals from awards of commissioners in action for condemnations of land under Title VII, Part III of the Code of Civil Procedure, in so far as the same may be applicable. A certified copy of the final determination of the court on such appeal shall be filed with the county drain commissioner. In case of such appeal being taken, a certified copy of the final determination by the court shall be deemed sufficient release of the lands necessary to be taken for such drain and upon which damages are awarded in the county in which they are situated, in trust to and for the uses and purposes of drainage, and for no other purpose whatever. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 392.]

ARTICLE III.

CONSTRUCTION OF DRAINS.

§§ 2433, 2434. Order for Construction—Contracts—Assessment.

(Section 1.) Upon the release of right of way and the award of damages, or upon the determination and return of the special commissioners, or order of the district court, as the case may be, the county drain commissioner shall make his final order of determination establishing the drain, a certified copy of which order of determination shall be filed with the county clerk and recorder within five days after such order is made. He shall include in such order a description of the several tracts or parcels of land and the names of cities, towns, counties, railways and irrigation ditches to be assessed for the construction of such drain, which said tracts or parcels of land together with said cities, towns, counties, railways and irrigation ditches shall constitute the drainage district for that purpose, to be known and designated in such order by the same name as the drain. After the final order of determination is made, he shall then prepare, or cause to be prepared, detailed plans and specifications of the proposed work, and also forms of proposal of bid and form of contract. Such specifications shall state whether all of the taxes to be spread for the construction of such drain shall be assessed and collected in that same year, or whether the same shall be divided into two or more equal installments, one installment to be collected in that same year, and the other installment or installments within the ten years next following. He shall give not less than ten days' notice of the time and place of letting contracts by serving personal notice on every person whose lands are affected by such assessments and who resides in the county, which notice shall be served in the same manner as provided in this act for the personal service of citations, and by causing a copy thereof to be published, not less than two insertions, in one or more newspapers published and of general circulation in the county, and by mailing a copy of such notice to nonresident owners, at their places of residence, if known; provided, that in case an incorporated city or town, or any portion thereof, is included in a drain district, it shall not be necessary to serve personal notice on any of the owners of land included in such incorporated city or town, but that such notice shall be served upon such owners by mailing a copy thereof to each of such owners or his agent at his last known address, upon the same day such notice is first published. Such notice shall contain a description of the several tracts or parcels of lands and other elements constituting the drainage district, as above provided. It shall also contain a statement of the exact time at which bids will be received for the construction of the drain; the amount of the certified check required to accompany all bids, the manner in which the funds for the construction of the drain will be raised, expressing the number of annual installments in which the taxes will be payable, and a statement that the apportionment of the assessment to be levied upon the lands, irrigation ditches and other elements comprising such district, will be subject to review ten days after the day that the contract for the construction of the drain is let or awarded. This assessment sheet shall be subject to review as hereinbefore stated ten days after the day of letting the contract until noon and from 1 o'clock until 5 o'clock in the afternoon. At such review, the county drain commissioner shall hear the proofs and

allegations of all parties in interest, and shall carefully reconsider and review the descriptions of lands comprised within the drainage district, and the manner of assessing each of the said descriptions of land, and equalize the same as may seem just and equitable. At such review he may change the rate or amount to be assessed against any tract or parcel of land, or against the county, incorporated town, railroads or any irrigation ditch, or may omit from said drainage district any parcel or tract of land which in his judgment, after such review is had, is not liable for a portion of the cost of such construction under the provisions of this act. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 393.]

§ 2435. Awarding of Contracts.

(Section 2.) The county drain commissioner shall on the date fixed upon by him, and named in the notice of letting of contract, proceed to receive bids and let contracts for the construction of the drain, and make contracts with the lowest responsible bidder giving adequate security for the performance of the work. Such security shall cover the completion of the job in the manner and within the time fixed in the contract, and shall be in a sum to be fixed and determined by the county drain commissioner. The county drain commissioner shall reserve the right to reject any and all bids, and may adjourn such letting in whole or in part, from time to time to such other time or place, to be by him at the time of such adjournment publicly announced, as shall to him seem proper, but not in all more than forty days from and after the time of letting advertised. The parties who are assessed a tax for the construction of such drain, and who may be bidders for the contracts thereon, shall, if equal bidder with other parties, be preferred in awarding such contracts. And it shall be the duty of the county drain commissioner to supervise the construction of said drain and see that the work is done substantially in conformity with the contract and specifications. When the drain is completed, the county drain commissioner shall inspect the same, and after he has found all the work completed according to the plans and specifications, he shall certify in writing that the drain is so completed, and file such certificate with the county clerk and recorder. It shall not be lawful for the county commissioners to issue orders on the fund of any drain exceeding eighty-five per cent of the amount earned on any contract, until after the acceptance of said work by the county drain commissioner, and the said certificate of the drain commissioner is filed. In case of any open drain, the dirt excavated therefrom shall be placed, as near as may be, equally on each side of the drain, and shall be left in piles more than four feet high except where the drain runs along a highway, or where the drain commissioner, for good cause, may permit the same to be done; provided, that the owner of said lands may, by written consent, allow the dirt taken from said drain to be otherwise disposed of. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 394.]

§ 2436. Power of Commissioner Regarding Performance of Contract—Forfeiture and Reletting.

(Section 3.) The drain commissioner shall have the power to grant a reasonable extension of time for the completion of any contract. When any contract is not finished within the time specified, or to which it may be extended, the county drain commissioner may declare such contract for-

feited, and shall within a reasonable time thereafter, relet the unfinished portion thereof to the lowest responsible bidder, by public letting after not less than five days' notice thereof, by posting in five public places in the district, or by private letting when such can be done at a price per foot for the uncompleted portion thereof not exceeding the price per foot at which the job was first let; and he shall make contract and take security in each case as hereinbefore provided. The cost of completing such part over and above the contract price, if any, and the expense of notice and reletting shall be collected by the county drain commissioner from the parties first contracting or from their bondsmen, which moneys, when so collected, shall be deposited with the county treasurer, and placed to the credit of such drain; provided, that in no case shall the county drain commissioner declare any such contract forfeited without first giving five days' notice thereof to the contractor, if he can be found, and if not found then by a written notice left at his last place of residence, with some person of suitable age and discretion, who shall be informed of its contents, if such contractor have a known residence within the county. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 395.]

ARTICLE IV.

ASSESSMENT OF BENEFITS.

§ 2437. Commissioner to Apportion Cost of Construction.

(Section 1.) Before the day of review, the county drain commissioner shall apportion the per cent of the cost of construction which each tract of land, railroad, city, town, county or irrigation ditch shall bear. In apportioning such cost to defray the expenses involved in the construction of the drain, the following principles shall be regarded, and assessments made in accordance therewith:

All lands which are swampy, bogged or water-logged and will be relieved and improved by virtue of the construction of the drain;

All lands which are becoming, or are liable to become, swampy, bogged, or water-logged, and which the construction of the drain will prevent from being thus affected;

All lands included within the watershed of the drain;

All lands from which surface or seepage waters will enter the drain, or can be conducted into the drain;

All lands upon which or through which, the surface or seepage water will be prevented from flowing, or can be prevented from flowing by virtue of the construction of the drain;

All lands which will sustain any direct benefit of any kind or character whatsoever, other than that sustained by all other lands in the same vicinity;

All railways, whether operated by steam, electricity or otherwise, whose right of way or roadbed will be benefited or can be benefited by reason of the construction of the drain;

All owners of irrigation ditches or canals from which water seeps, drains or wastes to, upon or through lands included within the district served by the drain;

The county or counties which the drain traverses, or which will be benefited as to public health, convenience, welfare or improvement of any public highway;

All incorporated cities or towns, and lands included within town sites and subdivisions, in whole or in part, directly benefited by reason of the construction of the drain;

All of the above classes of lands, railways, irrigation ditches, counties, cities, towns, town sites and subdivisions shall be liable to assessment for the construction of drains in such proportions as may seem just and equitable.

The benefits to accrue from the construction of the drain, to a railway, county, incorporated city or town, and lands included within a platted town site or subdivision being of a different character than those to accrue to agricultural lands, shall be considered in apportioning the assessment, and also, the damages and inconvenience caused by seepage and waste waters from irrigation ditches and from the higher lands, shall be considered in apportioning the assessment to them.

Such apportionment of the per cent of the cost of construction shall be subject to review and correction, and may be appealed from in the manner provided for in this act. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 396.]

Assessments for local improvements are not prohibited by the Constitution. *Billings Sugar Co. v. Fish*, 40 Mont. 256, 279, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973, 106 Pac. 565.

construction of drains or sewers. 26 L. R. A. (N. S.) 973.

Liability to pay special assessment for constructing drainage ditch as between life tenant and remainderman. *Ann. Cas.* 1912D, 1004.

Editorial Notes.

Property liable for assessment for the

§ 2438. Appeal from Assessment.

(Section 2.) The owner of any land, ditch or railway assessed for the construction of any drain, who may conceive himself aggrieved by the assessment made by the county drain commissioner, may, within ten days after the day of review provided for in the preceding article of this act, appeal therefrom and for such purpose make an application to the district court of the proper county for the appointment of a board of review as hereinafter provided, by serving upon the drain commissioner and by filing with said district court a notice to that effect, and by filing also a bond with such court in the sum of two hundred dollars with one or more sureties to be approved by the clerk of said district court conditioned upon the payment of all costs in case the assessment made by the county drain commissioner shall be sustained. Any county, incorporated city or town assessed a per cent of the cost of the construction of any drain that may conceive itself or themselves aggrieved by the assessment made by the county drain commissioner, may, within ten days after the date of review provided for in the preceding section, appeal therefrom as herein provided. Only one application for a board of review shall be entertained by such district court for any one drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 397.]

§ 2439. Appointment of Board of Review—Proceedings Leading Up to Hearing.

(Section 3.) The district court upon receipt of any such application, as hereinbefore provided for, shall forthwith notify the county drain commissioner in writing of such appeal and shall thereupon make an order appointing three disinterested and competent freeholders of such county, not

residents of the district or districts affected by said drain, as members of a board of review. The persons so appointed shall constitute the board of review. The court shall thereupon, with the concurrence of the county drain commissioner, immediately fix a time and place when and where said board of review shall meet to review said assessments, which time shall not be less than ten nor more than fifteen days from the date of such appointment. The county drain commissioner shall thereupon give notice to the persons so appointed of their appointment, and of the time and place of meeting and shall give notice of such meeting by posting notices in at least five public places in each district affected by such assessment, and shall serve a like notice upon the appellant if he be a resident of any district affected and upon the county attorney of the county in all cases where the state or county is an interested party. Such services shall be made not less than five days before the day of hearing, and may be made either by personal service or by causing a copy thereof to be left at their several places of residence. Proof of service of notice of such meeting shall be made by the person serving said notice and shall be filed in the office of the clerk of the district court. At such hearing the board of review shall have the right and it shall be its duty to review all assessments made by the county drain commissioner on such drain. The person so appointed shall be sworn by the county drain commissioner to faithfully discharge the duties of such board of review; provided, that the proceedings in establishing any drain shall be subject to review upon certiorari, as herein provided. Notice of such certiorari shall be served upon the county drain commissioner within ten days after the copy of the final order of determination of such commissioner in establishing any drain has been filed with the county clerk and recorder as provided herein in the same manner as notice is required to be given of certiorari for reviewing judgments rendered by justices of the peace and the writ shall be issued and served, and bond given and approved and the subject matter brought to issue in the same time and manner, as near as may be, as in such cases provided, except that such certiorari may be heard by the court during term, or at chambers, upon five days' notice given to the opposite party; and the district court of the county shall hear and determine the same without unnecessary delay, and if any material defect be found in the proceedings for establishing the drain such proceedings shall be set aside. If the proceedings be sustained, the party bringing the certiorari shall be liable for the cost thereof, and if they be not sustained, the parties making application for the drain shall be liable for the costs. If no certiorari be brought within the time herein prescribed, the drain shall be deemed to have been legally established, and its legality shall not thereafter be questioned in any suit at law or equity; provided, no court shall allow any certiorari questioning the legality of any drain by any person, unless notice has been given to the county drain commissioner in accordance with the provisions of this section; provided further, that when such proceedings are brought, the county drain commissioner shall postpone the letting of contracts and all other proceedings until after the determination of the court. And if any error be found in the proceedings, the court shall direct the county drain commissioner to correct such error or errors and then proceed the same as though no error had been made. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 397.]

§ 2440. Powers of Board of Review on Hearing.

(Section 4.) The board of review shall proceed at the time and place specified in the notice to hear the proofs and allegations of all the parties in respect to the matter of appeal and shall thereupon proceed to view the lands benefited by such drain and the drainage area, and review all the assessments made by the county drain commissioner on such drain, and if in its judgment there be manifest error or inequality in such assessment, it shall order and make such changes therein as it may deem just and equitable. Should the board of review find upon personal examination that any land, railway, irrigation ditch, city or town, or any portion thereof, has been included in the drain district and assessed, which is not liable to assessment in accordance with the provisions of section 1 of this article [§ 2437 herein], then said board of review shall omit such land, railway, irrigation ditch, city or town, or such portion thereof, from such drain district and annul the assessment against it or such portion of it. Should the board of review find upon personal examination that there is any tract of land, railway, irrigation ditch, city or town, or any portion thereof, liable to assessment for the construction of the drain in accordance with the provisions of section 1 of this article [§ 2437 herein], which has not been assessed, it shall add such land or portion thereof to the drain district, and apportion the per cent of the cost to such. The board of review shall thereupon adjourn such review, to such other time or place, to be by it at the time of such adjournment, publicly announced, as shall to it seem proper, but not in all more than twenty (20) days from and after the time of review first advertised and shall serve a notice on all such owners of lands, railways or irrigation ditches living in the district; and on such cities and towns; such notice shall give the time and place of said review, also the description of lands, etc., added to said district, and shall be served at least ten days before the adjourned day of review. Should such owners liable to an assessment be nonresidents of the county there shall be a personal notice served on said owners as required above or a notice shall be published in some newspaper published in said county in at least two issues thereof, giving the description or descriptions of lands added to said assessment district; also giving the time and place where said board of review shall meet. The action and decision of said board shall be final, except in case of an appeal therefrom. The action and decision shall be reduced to writing and signed by a majority of the board, making the same, and shall be delivered to the county drain commissioner, together with all other papers relating thereto. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 399.]

§ 2441. Costs of Appeal.

(Section 5.) In case the assessments of the county drain commissioner shall be sustained by such board of review, the appellant shall pay the whole costs and expenses of such appeal. Such cost and expenses shall be ascertained and determined by the judge of the district court, and if not paid the applicant shall be liable on his bond for the full amount of such costs in an action at law, to be brought by the county drain commissioner, on the bond before any court having competent jurisdiction. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 400.]

§ 2442. Description of Lands.

(Section 6.) All descriptions of land under the provisions of this act shall be made by giving the legal subdivisions thereof, whenever practi-

cable, and when a tract to be benefited or affected by such drain is less than such legal subdivision, it may be described by designation of the lot or other boundaries, or in some way by which it may be known. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 400.]

§ 2443. Assessment of School and State Lands.

(Section 7.) School and state lands shall be assessed their per cent of the cost of construction and the collection thereof be enforced as state and county taxes against lands are collected and enforced. School and state lands shall be included in all assessments the same as other lands, but the sum of all such drain taxes that may be assessed against any tract of school or state lands shall not aggregate a sum greater than fifty per cent of the price of which said lands are held by the state. Any amount apportioned and assessed upon school or state lands shall be reported by the county commissioners to the registrar of the state land office within ten days after delivery of the assessment-roll of the county treasurer. Said registrar of the state land office shall enter on the books of his office, against each description of such state lands, the amount of drain taxes assessed thereon, and shall certify the same to the auditor who shall draw his warrant on the state treasurer therefor, to be paid out of any funds in his hands not otherwise appropriated. Such amount shall be forwarded by the registrar of the state land office to the county commissioners on or before the fifteenth day of January next, and shall by him be applied in payment of such taxes. No deed shall issue for such lands until all such drain taxes are paid with interest at six per cent. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 400.]

§ 2444. Additional Assessments.

(Section 8.) Whenever the amount assessed for the construction of any drain shall not be sufficient to complete the same, and to pay all the costs and incidental expenses, a further assessment shall be made to meet the deficit or additional expense. Such further assessment shall be apportioned, assessed, levied and collected as provided in the first instance, and on the same percentage, and shall be collected in one year, but there shall be no review of, nor appeal from such further assessment. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 401.]

§ 2445. Refusal of Persons Appointed to Act as Board of Review—Compensation.

(Section 9.) Should any or all the persons so appointed as a board of review, neglect or refuse to serve, or be unable to act, the county drain commissioner shall adjourn the hearing for a sufficient length of time not exceeding in all thirty days, to enable him to apply to the district court for the appointment of other persons to act on such board of review and shall make public announcement of the time and place of such adjournment. The review shall thereupon be deemed a continuous proceeding and no further notice shall be required. The district court shall, upon the showing being made, either that any or all the persons appointed as aforesaid have neglected, refused or were unable to act as the case may be and of the adjourned day of meeting, at once, by order appoint such other person or persons or [of] like qualifications as before to fill such vacancy. And the county drain commissioner shall notify the person or persons so ap-

pointed to fill such vacancy of his appointment and of the adjourned day of meeting. The person so appointed shall have the same power and perform the same duties as are herein provided for the board of review in the first instance. The persons acting as such board of review shall receive the sum of five (\$5) dollars per day for each day actually and necessarily spent in the discharge of their duties as members of such board of review, and also the actual, necessary expenses incurred by them. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 401.]

§ 2445a. Objection by Owners of Twenty-five Per Cent of Area.

(Section 10.) On the day of review, if objection is made in writing by land owners, the combined area of whose lands, comprise at least twenty-five per cent of the total area of the lands included in the district, to the construction of the proposed drain, on the ground that the cost will be greater than the benefits, then the said drain commissioner shall delay entering into a contract for the construction of the said proposed drain, for ten days. If at any time before the expiration of the said ten days, a petition is filed with said county drain commissioner, by land owners, the combined area of whose lands, will bear more than half of the total assessment levied against the whole district, requesting that the drain be not constructed, and if such petition is accompanied by the tender of money, or certified check on some approved bank, made payable to the county drain commissioner, in amount sufficient to cover all costs thus far involved in the proceedings of the proposed drain, then the said county drain commissioner shall abandon all further proceedings, in regard to the said proposed drain. If such objection to the construction of the drain is not made on the day of review in the manner described herein, then the county drain commissioner shall proceed forthwith with the letting of the contract for construction, and if such objection is made in the manner herein described but the request for the abandonment of the proceedings is not made in the manner described herein, or within the time specified herein, then the county drain commissioners shall at the expiration of ten days after such day of review, proceed with the letting of a contract or contracts for the construction of the said proposed drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 401.]

§ 2445b. Correction of Errors by Commissioner.

(Section 11.) If at any time before the assessment-roll is filed in the office of the county clerk and recorder, the county drain commissioner shall discover that an error had been made in any of the proceedings, he shall have the right, and it shall be his duty to correct the same. If such error occurs in the omission or description of any tract of land in the final order of determination, or in the notice of letting of contract or in the assessment-roll, he shall correct the same, and such error shall not exempt such tract from liability to proper assessment; provided that when such correction is made, the county drain commissioner shall serve notice on the owner, or owners, affected, in the same manner as is provided for serving notice for letting of contract. In case such owner or owners, conceive themselves aggrieved by such action of the county drain commissioner, they may make application for a board of review, in the same manner as is provided for reviewing the assessment, and the same proceeding shall follow as is provided therein. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 402.]

§ 2445c. Misnomer of Owner Immaterial.

(Section 12.) When, under any of the provisions of this act, special taxes and assessments are assessed against any tract of land, any railway or irrigation ditch as the property of a particular person or company, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 402.]

ARTICLE V.**LEVY AND COLLECTION OF DRAIN TAXES.****§ 2446. Determination of Costs of Construction.**

(Section 1.) After the day of review and in case of an appeal, then forthwith after such appeal shall have been decided and before the first day of August next following, the county drain commissioner shall make a computation of the entire cost of such drain, which shall include all the expenses of locating, establishing and constructing the same, including the commissioner's fees, cost of engineering, inspection and supervision, fees and expenses of special commissioners, and the amount of contracts for construction; also the cost of appeal in case the assessment of benefits made by the county drain commissioner shall not be sustained and all other expenses, and he shall add the whole into a gross sum and add thereto ten per centum of said gross sum to cover contingent expenses, and the entire sum so ascertained shall be deemed to be the cost of construction of said drain; provided, that when the drain shall have been completed before said assessment-roll is made and filed with the county clerk and recorder, the said ten per centum shall not be added to said gross sum. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 403.]

§ 2447. Preparation of Assessment-roll.

(Section 2.) The county drain commissioner shall thereupon make an assessment-roll for such drain, which roll shall be designated "[giving name] drain assessment-roll," and he shall enter therein a correct description of the tracts, parcels or subdivisions of land or against the county, incorporated town, railroads or any irrigation ditch assessed, as provided herein, and place opposite each description the amount of the assessment heretofore determined upon by him or by the board of review or court, as the case may be. He shall also enter thereon the amount of the taxes assessed against the county and the owners of irrigation ditches, railways, cities and towns, and in case such amount be payable in installments as provided in this act, he shall also enter thereon a memorandum of the installments thereof and of the year or years when such installments shall be spread, and shall add a certificate in writing of his determination made and stated in the specifications, whether the taxes assessed for the construction of the drain shall be paid in one or more years. Such rolls shall be dated and signed by said drain commissioner and filed on or before the first day of August in each year, in the office of the clerk and recorder of the county in which such lands may be located. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 403.]

§ 2448. County Clerk and Recorder to Deliver Assessment to County Commissioner.

(Section 3.) The county clerk and recorder shall, on or before the fifth day of August of each year, make and deliver to the county commis-

sioners of his county a certified statement of the several amounts of drain taxes to be assessed upon such county for the ensuing year, and shall specify therein the several amounts to be raised for each particular drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 403.]

§§ 2449, 2450. Clerk and Recorder to Spread Drain Taxes on Assessment-roll.

(Section 4.) The county clerk and recorder shall spread upon the assessment-roll of the county all drain taxes levied and assessed, as provided for in this act. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 404.]

§ 2451. Collections and Penalties.

(Section 5.) All drain taxes assessed under the provisions of this act shall be subject to the same interest and charges, and shall be collected in the same manner as state and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are or may be conferred by law for collecting general taxes. In all cases where suit is brought against the county treasurer arising out of the collection of any drain tax, the county shall defend such officer in the same manner that he had now the right to be defended in the collection of general taxes. No suit shall be instituted to recover any drain tax or money paid or property said [sold] therefor, or for damages on account thereof, unless brought within thirty days from the time of payment of such money to or sale of property by the collecting officer; and if such tax shall be paid under protest the reasons therefor shall be specified; and the same procedure observed as is or may be required by the general tax law. All taxes levied under the provisions of this act, with all lawful costs, interest and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner or owners of such lands until they are paid. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 404.]

§ 2452. Delinquent Taxes—Laws for Enforcement.

(Section 6.) If the taxes levied for the construction, cleaning out, widening, deepening, extending or maintenance of any drain are not collected by the county treasurer, they shall by him be returned, together with the lands upon which they were levied, to the county commissioners in the same return, at the same time, and in the manner, in every respect as lands are returned for state, county and city taxes, and such taxes, and all the general provisions of law now existing or that may be hereafter enacted for enforcing the payment of city, county and state taxes, shall apply to such drain taxes, and to the lands returned delinquent therefor, in the same manner and with like effect. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 404.]

§ 2453. Orders or Warrants for Payment of Contract.

(Section 7.) All orders or warrants for the payment of services rendered, work performed or material supplied, or in payment for lands for right of way or for damages awarded, shall be drawn by the county commissioners, upon the drain fund of each particular drain, after the

claims for such services rendered, work performed, material supplied, right of way or damage awards have been approved by the county drain commissioner. All orders or warrants for the payment of right of way, lands or awarded damages in excess of the amount of the assessment levied for benefits in each instance, shall, upon presentation, be paid out of the general fund of the county treasurer. The general fund shall be reimbursed for the amounts so paid out, from the first year's taxes of the particular drain on account of which they were drawn. All orders or warrants drawn for the payment of services rendered or expenses incurred, in the process of establishing, locating or supervising the construction of drains in the first instance, and the expenses incurred in the supervision of repairs, cleaning out, deepening, widening, extending or relocating established drains, shall be paid out of the first year's taxes, if they be sufficient therefor. Orders or warrants issued for labor and material furnished under construction contracts, shall be paid as follows: Such funds as shall remain of the first year's taxes, if any, after the hereinbefore mentioned amounts shall have been paid, shall be prorated among the different contractors, if there be more than one, and warrants issued therefor. Where the assessment for construction is spread over succeeding year, the funds shall be prorated among the different contractors, if there be more than one, and warrants issued for such prorated amounts. Provided, that orders or warrants drawn for the payment of all other claims than those specifically mentioned herein, shall be payable in the same manner and under the same conditions as warrants drawn on other county funds. Warrants shall bear interest at the rate of six per cent per annum, from the time they are drawn until they are paid, or until notices are given to those to whom they are issued or, when registered, in whose names they are registered, that money is available for their payment. Whenever the drain commissioner or the county commissioner deem it expedient, a claim may be paid by issuing warrants therefor, of various denominations, the sum of which will equal the amount of the claim, instead of issuing one warrant for the entire claim. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 404.]

§ 2454. Interest on Warrants—Form, Denomination, Registration, Redemption and Payment of Bonds and Warrants.

(Section 8.) When the assessment levied to defray the expenses incurred in the establishment, construction, cleaning out, repairing, deepening, widening or improving in any manner any drain, is payable in more than one installment, the interest on all outstanding warrants shall be paid annually on the first day of January of each year, unless the board of county commissioners prescribes some other date. The form of warrants to be used in such case may be changed to conform substantially to the following, and may be designated by using either the word "warrant" or "bond."

.... Drain District

United States of America,

State of Montana,

County of

Warrant (or bond) No. Dollars

Interest at the rate of 6% per annum. \$....

.... Drain District Coupon Warrant (or bond) issued by County,
State of Montana.

The treasurer of the county of, state of Montana, will pay to or bearer, the sum of dollars, as authorized by the first order of determination made on the day of, 19.., and the final order of determination made on the day of, 19.., by the county drain commissioner, creating the drain district in said county for the construction of the drain and appurtenances as authorized by said orders of determination to be done in said drain district, and all laws relating thereto, in payment of the contract or contracts in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of county in, Montana.

This warrant (or bond) bears interest at the rate of six per cent (6%) per annum from the date of issuing of this warrant (or bond) as expressed herein, until the date called for redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of in each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bears the engraved facsimile signature of the chairman of the board of county commissioners and the county clerk and recorder.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said drain district, as described in said orders of determination hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said drain district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the orders of determination of the county drain commissioner of county, Montana, relating to the issuance thereof.

(Seal)

Dated at, Montana, this day of, 19...

..... County, Montana.

By,

Chairman of Board of County Commissioners.

Attest:

.....,
County Clerk and Recorder.

Registered at the office of the county treasurer of County, Montana, this day of, 19...

.....,
County Treasurer.

Such warrants (or bonds) shall be signed by the chairman of the board of county commissioners and the clerk and recorder, and shall bear the corporate seal of the county. They shall be registered in the office of the county treasurer, and interest coupons shall be attached thereto, which shall also so be registered and shall bear the signature of the chairman of the board of county commissioners and the clerk and recorder; provided, however, that said coupons may bear the facsimile signature of said officers in the discretion of the board of county commissioners.

Said warrants (or bonds) shall be in denomination of one hundred (\$100) dollars or fractions or multiples thereof; and may be issued in installments, and may extend over a period not to exceed ten years. Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the drain district fund against which said warrants (or bonds) are issued, available therefor; provided that the county treasurer shall first pay out of such drain district fund annually such warrants (or bonds) as were issued for the payment of services rendered, or expenses incurred, in the process of establishing, locating, or supervising the construction or repairing of drains, as provided in the preceding article. After the above-mentioned warrants (or bonds) together with the interest thereon, have been paid, the said county treasurer, shall pay out of such drain district fund, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided further, that whenever there are any funds in any drain district fund after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds) which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer who shall give notice by mail to those in whose names such warrants (or bonds) are registered, or to the holder or holders of such warrants (or bonds) if their address be known. Such notice shall contain the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten days after such notices are mailed and on which date, so fixed, interest on such warrants (or bonds) shall cease.

The cost of printing this special form of warrant shall be paid for out of the drain fund for which they are intended to be used. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 405.]

§§ 2455-2457. Injunction Against Collection of Taxes.

(Section 9.) After any taxes have been assessed for the construction, location, establishment or repairing of any drain, no injunction shall issue to restrain the collection thereof, nor shall the same be in any manner stayed, unless the amount of such assessment shall first be paid into the county treasury to be applied upon such tax, in case the court in which the suit upon which such injunction is tried shall so order. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 408.]

§ 2458. Reassessment by Commissioner.

(Section 10.) Whenever any drain has been located and established and the work of construction completed or partly completed, and payment or provision for payment for the same has not been legally made, the county

drain commissioner shall, on application being made to him by any person or persons interested in the construction and maintenance of the said drain and the assessment of taxes therefor and for the payment of the same, without unnecessary delay proceed to relay and complete such drain under the provisions of this act, and reassess upon such lands, railways, irrigation ditches, cities or towns, or any portion thereof, which is liable to assessment, and the original cost thereof, together with the expenses of relaying and completing, and continue so to do until such drain has been legally established and constructed; provided, that on such relay or completion of drain proceedings it shall not be necessary to readvertise a day of letting, but he shall advertise a day of review for benefits, which review may be held in the office of the county drain commissioner; provided further, that any person who has paid the tax for benefits assessed against him for such drain shall be allowed the amount so paid and the county treasurer or other officer authorized to receive payment for taxes assessed in any county or city shall accept the receipt heretofore issued or the certificate of the county treasurer that such taxes were paid, for the payment of such drain taxes as cash and the same to be applied on such renewed assessment. The receipt so received by the county treasurer or other officer shall be credited to him and allowed as money. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 408.]

§ 2459. Correction of Assessment-roll—New Proceedings.

(Section 11.) In case any drain tax assessed, shall be set aside except for causes that would deprive the county drain commissioner of jurisdiction to construct the drain, the drain commissioner may begin proceedings anew at the stage where they shall be correct. In case a drain tax can or may be set aside for error in description or other defects in the county drain commissioner's or county treasurer's roll, the county drain commissioner shall report same to the board of county commissioners at their next regular session who shall order the same reassessed upon the proper description. Such report may be made at any time before the sale of the land for such tax. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 409.]

§ 2460. Drain Commission a Party to Actions.

(Section 12.) In any suit brought to set aside any drain tax, in any way attacking the legality of any drain proceedings, the county drain commissioner shall be made a party to said suit, and it shall be the duty of the county attorney of the county in which said drain is situated to defend said drain proceedings. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 409.]

§ 2460a. Assessment-roll for Maintenance Charges.

(Section 13.) For the purpose of providing the necessary funds for inspecting, superintending, repairing, protecting and maintaining the several drains within his jurisdiction, the county drain commissioner shall in conjunction with two interested tax paying freeholders of the drain district who shall be appointed by the board of county commissioners of the county in which such drain is located and who shall receive four dollars per day for each day necessarily employed make an assessment-roll, for each drainage district, similar to that made to provide for the cost of construction in the first instance, which shall be filed on or before the first day of August

in each year, in the office of the clerk and recorder of the county, and such assessment-roll, and drain taxes thus levied, shall be treated in all respects in the same manner as hereinbefore provided for the levying of drain taxes and assessments. Provided, that the amount of funds levied each year in any district shall be identical with that contained in the previous annual report of the drain commissioner unless the board of county commissioners shall on or before the 15th day of June for good cause, change or alter such amount. Provided further, that the amount of such annual assessment in any drain district shall not exceed five per cent of the total cost of construction of the drain in that district. Provided further, that in case the benefits for inspection, superintending, repairing, protecting and maintaining the drain, shall accrue to the various tracts of land, comprising the district in a different proportion than the benefits for the construction in the first instance, then the county drain commissioner shall make such changes in the manner of assessment as shall equalize the same. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 409.]

ARTICLE VI.

DRAINS TRAVERSING MORE THAN ONE COUNTY.

§ 2461. Application to Drain Commissioner of Either County.

(Section 1.) Whenever it may be desired to construct a drain traversing more than one county, or affecting lands lying in more than one county, application therefor shall be made to the county drain commissioner of either county traversed by the proposed drain. Such application shall be subject to the same conditions and the applicants to the same obligations and liabilities as in other drains under this act. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 410.]

§ 2462. Commissioners of Other Counties Affected to be Notified of Application.

(Section 2.) If, upon examination, the county drain commissioner shall deem the same to be necessary and for the good of the public health, convenience or welfare, he shall, as soon as practicable thereafter, fix a time and place of meeting, and notify the county drain commissioner or commissioners of such other county or counties to that effect, and furnish him or each of them with a certified copy of such application. Such county drain commissioner or commissioners shall, at the time and place as fixed above, meet with the county drain commissioners having the original application, and they shall thereupon and thereafter jointly take all steps, and perform all acts and sign all papers, as county drain commissioners are required to do singly in the case of other drains, including the application to the district court. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 410.]

§ 2463. Appointment of Special Commissioners.

(Section 3.) In case all the persons whose lands are traversed by such drain, as proposed in this article, shall not within twenty days after the issue of the first order of determination as provided in this act, have voluntarily released the right of way therefor and all damages on account thereof, the county drain commissioners shall apply to the judge of each judicial district in which any such unreleased lands may be situated for

the appointment of three special commissioners. When such application shall be made and when all papers shall have been found to be in conformity with the provisions of this act, the court to whom such application has been made shall appoint such special commissioners and shall deliver to each commissioner a certified copy of the order of the appointment of such special commissioners. Such special commissioners shall be resident freeholders of the county or counties and not residents of the district or districts, to be traversed by the proposed drain, in which they are appointed. The same commissioners may be appointed by each court. All proceedings had in the appointment of special commissioners, under the provisions of this article shall be similar to those provided herein for the appointment of other special commissioners. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 410.]

§ 2464. Proceedings of Commissioner.

(Section 4.) When such special drain commissioners shall have been notified of their appointment in the manner as provided herein, they shall at the time and place fixed by the district court, meet with the county drain commissioners of the respective counties in which such proposed drain is applied for, and view the whole line of such drain, or such portion thereof as shall be deemed sufficient, and shall, under the same oath and condition, perform their services in the same manner and with like effect as hereinbefore provided in this act, for other special commissioner. Before any contract for the construction of any part of any such drain shall be let, the county drain commissioners shall agree and determine upon the just per cent of the whole cost of construction which each county shall bear, which determination shall be in writing and signed by them, and a copy thereof made for each county drain commissioner whose county is affected by said drain; provided, if said county drain commissioners cannot agree and determine the just per cent of the cost of construction that each county shall bear, then it shall be their duty to select a county commissioner from some adjoining county not affected by such drain, who shall have the power to determine said per cent for them, and said county commissioner's decision of the just per cent shall be final, and they shall make copies of said determination as above provided. The costs and expense of said county commissioner shall be paid the same as those of the county drain commissioners of the counties affected by such drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 411.]

§ 2465. Apportionment of Benefits Between Counties.

(Section 5.) Each commissioner shall thereupon assess within his own jurisdiction such amount as may have been determined upon, and shall assess against the county, railways, irrigation ditches, cities or towns, or any portion thereof subject to assessment such per cent thereof as may be justly charged against them severally for the construction of such drain, and the balance he shall apportion against the lands in proportion as they will be benefited thereby. Each county drain commissioner shall furnish such several assessments to the clerk and recorder of his own county, in which the lands affected thereby may be situated, and such assessments shall be computed, divided, spread, collected and returned in the same manner, in every respect, as provided in the case of other drains constructed under this act. Such assessments shall be subject to the same right of

appeal and under the same conditions as hereinbefore provided. The taxes for such drains shall be collected by the county treasurer of their respective counties to be disbursed by him. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 411.]

§ 2466. Record of Drains—Care of Drains.

(Section 6.) A full record of such drains shall be made and entered by the several drain commissioners in the drain record books of their respective counties, and a certified copy of all the papers relative to the construction of such drain shall be delivered to the other county drain commissioners by the drain commissioner having the original application which certified copies shall be filed in the office of the county clerk of their respective counties. The parts of each of such drains situated and lying in one county shall thereafter be under the care and supervision of the county drain commissioner of such county, subject, however, to the provisions of sections 8 and 9 of this article. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 412.]

§ 2467. Drains in Adjoining State.

(Section 7.) Whenever any proposed drain lies wholly or partly in an adjoining state, or the lands to be drained thereby lie partly in an adjoining state, application for the construction of such drain may be made to any county drain commissioner representing any county in this state in which any portion of such proposed drain or lands to be affected thereby lie, and the same proceedings shall be had touching the portion of such drain or the lands to be drained or affected thereby, lying within this state, as are provided in this act in the case of drains and lands lying wholly within this state; provided, that before any expense shall be incurred in relation to any such proposed drain, a voluntary release of the right of way for construction of such portion of such drain as may lie without this state, and an agreement to keep the same or permit the same to be kept clear from obstruction, shall first be obtained from the parties owning lands outside of this state through which such drain or portion thereof is to pass and such release and agreement shall be filed with the said drain commissioner, and shall form a part of the record of his proceedings in the premises. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 412.]

§ 2467a. Repairing Drains Traversing More Than One County.

(Section 8.) Each county drain commissioner shall maintain and keep in repair and good order, the portions of all joint county drains which are in his county, so far as the funds, herein provided for such purpose, will permit. All work and expenses involved in such maintenance shall be done only after the same has been ordered jointly by the county drain commissioners, having jurisdiction over the entire drain. Provided, that all such work shall be done under the same provisions which govern the maintaining and repairing of drains, as are made in section 1 of Article VII of this act. For the purpose of providing funds for inspecting, superintending, repairing, protecting and maintaining joint county drains which have been established and constructed, the county drain commissioners, having jurisdiction over such drains, shall determine the amount of funds necessary for such purpose, and the proportion which shall be levied against the drainage districts in each county, and each shall include this amount in the

report made to the county commissioners at their regular June meetings. Each drain commissioner shall make an assessment-roll for the portions of the drainage district in his county, under the same provisions as are made in section 13 of article V of this act. Provided, that, when in the opinion of such drain commissioners, the cost of any contemplated repairs will exceed the amount of funds available for such purpose, no proceedings shall be had until an application shall have been made, as provided for in section 9 of this article. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 412.]

§ 2468. Procedure When Repair is Necessary and Funds not Available.

(Section 9.) Whenever a drain heretofore established and which was constructed in and traverses more than one county needs cleaning out, deepening, widening, extending, repairing or any protective work, the cost of which will, in the judgment of the drain commissioner, exceed the funds available, any five freeholders of either county by which such drain is traversed (or affected) one or more of whom shall be owners of land which at the time of its construction was assessed therefor, may make application to the county drain commissioner of either county in which such drain is situated, setting forth the necessity thereof. If, upon examination such drain commissioner shall deem the same to be necessary and for the good of the public health, he shall as soon as practicable thereafter, notify the county drain commissioner or commissioners of such other counties and furnish them with a certified copy of such application, and they shall thereupon meet and jointly take such measures as are provided in this article relative to drains traversing more than one county, and act in like manner, as provided in this act in the manner of establishing drains. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 413.]

ARTICLE VII.

MAINTENANCE OF DRAINS.

§ 2469. Duty of Commissioner—Assessments and Contracts.

(Section 1.) The county drain commissioner shall have jurisdiction over all established drains, and it shall be his duty to keep them in proper condition and repair, in so far as the funds at his disposal herein provided for, will permit. He shall have the power and authority, and it shall be his duty, to expend such amounts for properly maintaining and protecting such drains at such times and in such manner, as he may deem proper, provided that the amount or amounts so expended on any drain during any year, shall not exceed the amount of the funds available for such purposes within such year. He may have such work performed and may purchase the materials therefor, provided such work and materials for any one drain do not exceed an expenditure of five hundred dollars (\$500), without receiving bids, and awarding a contract therefor. Whenever the said county drain commissioner may deem it advantageous he may enter into a contract upon the best terms obtainable to have such work performed, or materials furnished but under no circumstances shall he expend more than five hundred dollars (\$500) for any one purpose, on any one drain, portion or section thereof, without receiving bids for doing the work and furnishing the materials therefor after advertising the same for at least ten days, and awarding a contract for the same. Whenever a drain, or any portion

thereof, needs cleaning out, straightening, deepening, widening, repairing or extending, or whenever any protective work, such as the construction of surface ditches, inlets, subsidiary drains, lateral drains, branch drains or any appurtenances, is necessary; or whenever an increase in the size of a conduit of a blind or covered drain is necessary, or a relocation of a portion of such drain is necessary, or would be more conducive to subserving the purpose or purposes of such drain, and the total cost of such work, in the judgment of the drain commissioner, will exceed the amount of funds available for such purpose, it shall be necessary, before any proceedings are commenced, for at least five freeholders of the districts in which such drain is situated, one or more of whom shall be owners of land liable to an assessment for benefits in having such work performed, to make application, in writing, to the county drain commissioner, setting forth the necessity therefor and if in his judgment, the request of the applicants should be granted, he shall proceed in the same manner as is provided in this act, for the location and construction of a drain in the first instance, expecting that he shall issue but one order of determination, instead of two. This order of determination shall describe the petition received for the proposed work, and shall contain a statement that plans and specifications have been prepared for the work, the manner of providing the funds for payment of the work, a description of the work which it is proposed to do, a description in the change in location of any portion of the drain, if any there be, and a description of the route of any extensions, branches or laterals, and the dimensions of the same. The assessments against the various tracts of land in the district, in which this work is to be performed, shall be in proportion to the benefits so far as it is possible to determine, and the damage caused by seepage or overflow from irrigation ditches and from higher lands, and for this purpose the county drain commissioner may use the same manner of making the assessment as was used in the construction of the drain, in the first instance, or he may make such changes, as in his judgment, shall be deemed just and equitable. The application need only refer to the drain by name, and the county drain commissioner may have such work performed as will best accomplish the results sought for in the application, and need not be limited to what is specifically set forth in such application. Before the contract of any work is let the necessary right of way required for the purposed drain, branches, or laterals shall be obtained. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 414.]

§ 2470. Application for Cleaning or Widening Drains.

(Section 2.) Such assessment, and the collection, returns and enforcement thereof, shall be made in the same manner and under the same provisions as in this act is provided for drain taxes assessed, collected, returned and enforced in the first instance. In case the necessity for any cleaning out or repair work arises from the act or neglect of any land owner or tenant, said act or neglect shall be taken into consideration by the county drain commissioner, in such assessment, and he shall make a record in the minutes of such drain kept by him, of the facts taken into such consideration in making such assessment. The work involved in placing the drain in a proper condition as sought for in the application shall be advertised and let, and the contracts therefor, awarded and accepted and paid for, as provided for in the first instance. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 415.]

§ 2471. Legal Drains—What are.

(Section 3.) All drains regularly established, opened or constructed under any provisions of law heretofore existing, shall be deemed to be legal drains under this act, and shall hereafter be under the jurisdiction of the county drain commissioners, and in all drains traversing more than one county and heretofore constructed shall hereafter be under the jurisdiction of the county drain commissioner of the counties traversed by said drain acting jointly, and any drain that has been established for ten years shall be conclusively deemed to have been regularly established, and it shall be the duty of the county drain commissioner, where no records of such drains have been preserved, to see that the records of such drains are made in the most practicable manner in the drain records of their respective counties. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 415.]

§ 2472. Powers of Commissioner Respecting Repairs.

(Section 4.) All powers conferred by this act for establishing and constructing drains and for the enforcement of assessments thereof, shall also extend to and include the cleaning out, straightening, deepening, widening, extending, protecting and repairing, of any drains which heretofore have been laid, or may hereafter be constructed; also to straightening, cleaning out and deepening the channels of creeks and streams, and the constructing, maintaining, remodeling and repairing of levees, dikes, and barriers for the purpose of drainage. The county drain commissioners may relocate portions of any drain in order to make it more serviceable, or more easily maintained, and he may relocate or extend the line of any drain, if the same be necessary in order to provide a suitable outlet, in which case he shall cause a survey thereof to be made; provided, that no proceeding affecting the rights of persons or property, shall be had under this section, except upon a like application, notice, hearing and award prescribed in this act, for the construction of drains in the first instance. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 416.]

§ 2473. Vacation or Abandonment of Drain.

(Section 5.) The county drain commissioner may, upon proper application as required in this act for repairing a drain, and upon giving fifteen days' notice thereof by posting said notice in three conspicuous places along the drain, declare any drain vacated and abandoned if in his judgment the same has ceased to be of public utility; provided, that private rights of persons acquired by reason of the location and establishment of such drain shall not be interfered with, or in any way be impaired thereby. The parties so applying shall pay all expenses of such vacating and abandonment. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 416.]

§ 2474. Maintenance of Drains Heretofore Established.

(Section 6.) Drains for which an application has been made or which has been constructed, under the provisions of any law heretofore enacted, may be laid, constructed, completed, relaid, cleaned out, widened, deepened, extended or maintained, as the case may be, under the provisions of this act. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 416.]

§ 2475. Use of Drain to Conduct Waste Water—Obstructions.

(Section 7.) Where blind drains are constructed, they shall not be used for conducting waste water, resulting from irrigation, or from other sources,

when possible to avoid the same. The county drain commissioner may, in exceptional cases, where good cause can be shown for so doing, grant permission in writing to allow such waste water to enter such blind drain; provided, that the capacity of such drain is ample enough to carry such waste water in addition to the normal flow in such drain. Whenever any person shall obstruct any established drain or allow waste water to enter it without the permission, in writing, of the county drain commissioner, it shall be the duty of said drain commissioner to cause such obstruction to be removed, and to prevent the inflow of such waste water. The person or persons, causing such obstruction, or allowing such waste water to enter such drain, shall be liable for the expense attending the removal of such obstruction, or the repairing of the damage caused by such waste water, entering the drain, or both, together with charges of the drain commissioner, and the same shall be a lien upon the lands of the party, or parties, causing or permitting such acts to be done; and all of the expenses, shall, by the drain commissioner, be reported to the board of county commissioners, together with the report of his doings in the premises, and by such board, shall be ordered spread upon the land of the offending party or parties, should the same remain unpaid until the first day of August next following. Provided, that the owner or occupants of the land on which the obstruction is claimed to exist, or who are responsible for allowing such waste water to enter the drain, shall be given a notice of at least five days, to remove such obstruction or repair such damage, or both, resulting from such obstruction or waste water. This provision as to the obstruction of any drain, shall not apply where the obstruction was caused by natural causes, but the owner of stock who shall permit his horses, cattle, pigs or other stock to obstruct any drain by tramping in it or otherwise, shall be deemed to be the party causing such obstruction. Nothing contained in this section shall in any way impede or bar the right of any person to make criminal complaint, under any existing law, for any obstruction or damaging of a drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 416.]

ARTICLE VIII.

MISCELLANEOUS PROVISIONS.

§ 2476. Appointment of Deputies.

(Section 1.) When in the opinion of the board of county commissioners it becomes necessary the county drain commissioner may appoint one deputy or more whose duty it shall be to act in conjunction with him or in his place. Such deputy or deputies when so appointed, shall file a bond with the county commissioners, to be approved by them in the sum of one thousand dollars, for the faithful performance of duties. Such appointments, when so made, shall be in writing and filed with the clerk and recorder of the county. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 417.]

§ 2477. Compensation of Deputies.

(Section 2.) Deputy county drain commissioners shall be under the supervision of the county drain commissioner, and shall perform such duties as may be designated by him, and shall have all the powers and authority granted in this act to the county drain commissioner, when act-

ing for him. They shall receive for their compensation not more than four dollars for each day actually and necessarily spent by them in the discharge of their duties, together with necessary expenses incurred. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 418.]

§ 2478. County Clerks to Procure Books and Stationery.

(Section 3.) County clerks and recorders shall be authorized and it shall be their duty to procure at the expense of their respective counties the necessary office equipment, books, blanks, and stationery for the use of drain commissioners and each county drain commissioner shall furnish upon request blank applications to any person who may desire to file an application for the locating of any drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 418.]

§ 2479. Compensation of Drain Commissioners.

(Section 4.) Drain commissioners shall receive for their services not to exceed five dollars per day for each day actually and necessarily spent by them in the discharge of the duties of their office, together with necessary expenses incurred in such discharge of duties. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 418.]

§ 2480. Accounts of Commissioner to be Verified.

(Section 5.) The accounts of such drain commissioner or his deputy shall be verified by the oath of the drain commissioner or deputy. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 418.]

§ 2481. Compensation of Special Commissioners.

(Section 6.) Special commissioners and members of boards of review shall receive five dollars per day as their compensation for each day's services actually rendered, together with necessary expenses incurred, and newspaper publishers shall receive contract rates for advertising. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 418.]

§ 2482. Duties of Attorney General Respecting Blank Forms.

(Section 7.) It shall be the duty of the Attorney General upon the passage of this act to revise, or cause the same to be done under his supervision, the set of blank forms now in use and required under the provisions of this act, to conform to the said provisions thereof; and it shall be the duty of the Secretary of State to publish a sufficient number of copies of this act in pamphlet form with an index thereto, together with an appendix containing a copy of all such blank forms. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 418.]

§ 2483. Injury to or Obstruction of Drain—Penalty.

(Section 8.) If any person shall willfully or maliciously remove any section or grade stake set along the line of any drain, or obstruct or injure any drain, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, and the costs of prosecution or in default of the payment thereof, by imprisonment in the county jail not exceeding ninety days. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 418.]

§ 2484. Attorney General to Represent State.

(Section 9.) In all proceedings under this act when the state shall be an interested party and liable to be assessed for benefits, it shall be the duty of the Attorney General of the state in which such lands are situated, to represent the interests of the state, and to appear in its behalf, and he shall make a report of his actions in each case to the register of the state land office. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 419.]

§ 2485. Disqualification of Drain Commissioner.

(Section 10.) Whenever the county drain commissioner of any county shall receive a petition asking for the laying out, cleaning out, deepening, widening or repairing of any drain, or a petition asking for proceedings by virtue of which an assessment upon lands for benefits received would result, wherein such county drain commissioner shall be interested by reason of himself, wife or child, owning lands that would be liable to an assessment for benefits upon the work or proceeding proposed to be done or had, such county drain commissioner may be disqualified to act in the proceedings incident to the construction and completion of such contemplated work. In order to effect such disqualification, such county drain commissioner may file a petition with the judge of the district court requesting the appointment of a special drain commissioner to act upon the drain in question, or, three or more freeholders of lands subject to assessment for benefits which may result from the work contemplated, may file a petition with the judge of the district court stating that the county drain commissioner, his wife or child, owns lands subject to assessment for the drain in question and requesting the appointment of a special county drain commissioner. In all cases, such petition for the appointment of a special drain commissioner shall be made before the day designated for the letting of contract, otherwise, the county drain commissioner shall not become disqualified acting in the proceedings of the construction or repair of the drain in question. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 419.]

§ 2486. Petition for Special Commissioner—Notice.

(Section 11.) Upon receiving such petition, and certificate or request aforesaid, the judge of the district court shall give notice by publication of the filing of a petition and of a day of hearing to consider the appointment of, such special county drain commissioner. Such notice shall recite that a petition affecting a certain drain, naming the location in the township to be affected thereby, has been filed with him, and that it is claimed that the county drain commissioner is disqualified to act thereon, and shall fix the day of hearing to determine whether such county drain commissioner is disqualified, and if he is to appoint a special county drain commissioner in the premises. Such notice shall be printed in some newspaper published and of general circulation in the county in which the drain is situated at least once a week for three weeks next prior to the day of hearing so fixed. Such publication shall be in full and complete notice to any and all parties in interest. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 419.]

§ 2487. Hearing of Petition for Disqualification.

(Section 12.) On such day of hearing or to such other time or times as the court may adjourn, not exceeding thirty days in all, the court shall

proceed to hear the allegations of the parties in interest and shall determine whether or not the county drain commissioner is disqualified to act in the premises. If the county drain commissioner shall be found not to be disqualified, the court shall order the proceedings before it dismissed, and turn such petition over to the county drain commissioner for his action thereon. If the county drain commissioner shall be found to be disqualified in the premises, the court shall thereupon appoint some disinterested resident of said county not a resident or freeholder of the districts proposed to be affected by the drain in question, to act as a special county drain commissioner of and over the drain in question. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 420.]

§ 2488. Powers of Special Commissioners.

(Section 13.) For the purpose of carrying on and completing the proceedings on said drain, and the construction and work thereon, such special county drain commissioner shall have all of the powers of the county drain commissioner over said drain and its drainage or assessing district, and shall take all of the steps and proceedings the county drain commissioner should take by law in like circumstances where he is not interested. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 420.]

§ 2489. Bond of Special Commissioner.

(Section 14.) Such special county drain commissioner shall qualify within ten days after notice of such appointment before the clerk of the district court, giving a bond in the penal sum of two thousand dollars, with surety or sureties to be approved by such court, conditioned in the same manner as is required in the bond of the county drain commissioner. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 420.]

§ 2490. Compensation of Special Commissioner.

(Section 15.) Such special county drain commissioner shall receive the same compensation as shall be allowed to the county drain commissioner, and his services shall be allowed in the same manner as is or shall be provided for allowing the services of the county drain commissioner, and shall be paid from the drain fund of the drain upon which he works. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 420.]

§ 2491. Duties—Assessments and Payments.

(Section 16.) Such special county drain commissioner shall make his assessment-rolls upon such drain, and deliver the same to the county drain commissioner. Such special county drain commissioners shall likewise certify to the county commissioners orders to be drawn upon such drain fund, and the county commissioners shall draw the orders so certified; provided, the county commissioners shall not be obliged to draw such orders if they shall ascertain that the work for which they are to be given is not done as certified. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 420.]

§ 2492. Special Commissioner to Deliver Papers to Regular Commissioner.

(Section 17.) On the completion of the proceedings and the construction of the drain in question, such special county drain commissioner shall deliver all of his papers and proceedings upon said drain to the county

drain commissioner to be by him recorded as in other cases. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 421.]

§ 2493. Special Commissioners for Drain in Several Counties.

(Section 18.) In the case of a drain affecting more than one county, and any county drain commissioner shall be disqualified to act thereon, a special county drain commissioner for that county shall be appointed in the manner herein provided, with the powers and duties herein provided. [Amendment approved March 11, 1915, Laws 1915, c. 147, p. 421.]

§ 2494. Expenses of Special Drain Commissioner.

(Section 19.) The county drain commissioner shall furnish such special drain commissioner the necessary papers and stationery to be paid for out of the general fund of the county. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 421.]

§ 2495. Appeal by Dissatisfied Owner.

(Section 20.) Any owner of lands taken for right of way for drain who is dissatisfied with the award made by special commissioners under this act, may appeal from such award to the district court, and such appeal shall be taken, tried and determined as are appeals from awards of commissioners in actions for condemnation of lands under Title VII, Part III, of the 1907 Code of Civil Procedure, in so far as the same may be applicable.

A certified copy of the final determination of the court on such appeal shall be filed with the county drain commissioner. In case of such appeal being taken a certified copy of the final determination by the court shall be deemed sufficient release of the lands necessary to be taken for such drain, and upon which damages are awarded, in the county in which they are situated, in trust to and for the uses and purposes of drainage, and for no other use or purpose whatever. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 421.]

§ 2496. Construction of Lateral Drains.

(Section 21.) Whenever three or more persons who own lands within a drain district, which have been assessed for the construction of such drain shall desire to further facilitate the drainage of their lands by the construction of a lateral drain, they may proceed to have such drain established, located and constructed, in the manner provided in this act for the construction of drains in the first instance, and the drain commissioner shall proceed in the same manner to locate, establish and construct such drain, and make the assessments therefor, and when such drain is completed, it shall become a part of the drainage system of the original district, and shall be under the jurisdiction of the county drain commissioner, and shall be maintained with the funds provided for maintenance, derived from such original district. Provided, that the application for the location and establishment of such lateral drain need be signed by only three or more owners of land liable to assessment for benefits, in the construction of such lateral drain. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 421.]

ARTICLE IX.

Section 1. All acts and parts of acts in conflict herewith are hereby repealed.

ARTICLE X.

Section 1. This act [§§ 2403-2496 herein] shall be in full force and effect from and after its passage and approval. [Amendment approved March 11, 1915; Laws 1915, c. 147, p. 421.]

The foregoing sections 2403-2496 were previously amended in 1909: See Laws 1909, p. 231.

§ 2497. Indebtedness of Irrigation District—Limitations upon—Warrants.

(Section 1.) No irrigation district now existing or hereafter created shall become indebted in any manner or for any purpose in any one year in an amount exceeding fifteen per cent of the assessed valuation of said district, except that for the purpose of organization or for any of the immediate purposes of this act, or in order to meet the expenses occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur an additional indebtedness not exceeding ten per cent of the assessed valuation of said district, and may cause warrants of the district to issue therefor bearing interest at the rate not to exceed six per cent per annum, provided, however, that this limitation shall not apply to the indebtedness for which bonds have been or may be issued as provided for by law, or to warrants issued for unpaid interest on the bonds of any irrigation district.

(Section 2.) All warrants or other evidence of indebtedness heretofore issued by any irrigating district for an indebtedness incurred by said district and for which said district received value, now outstanding and unpaid and in excess of any limitation provided by law, are hereby declared valid and enforceable obligations against such district, the same as though such limitation had not been exceeded, and any exchange of unsold portions of any authorized bond issue of any irrigation district for such outstanding warrants of said district is hereby declared valid. [Approved February 27, 1915; Laws 1915, c. 44, p. 64.]

TAXATION.

§ 2498.

Taxation of mines. See note post, § 2500.

§ 2499. Exemptions from Taxation.

The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt: Provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories, whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only. [Amendment approved March 4, 1911; Laws 1911, p. 166.]

Nature of fee demanded of corporations. See note, ante, § 165.

Exemption of federal property from special assessments. See note, post, § 3386.

Special assessments on school property. See note, post, § 3396.

Editorial Notes.

Exemption from taxation of land owned by governmental bodies, or in which they have an interest. 132 Am. St. Rep. 291.

Public property, what not subject to taxation. 33 Am. St. Rep. 406.

What included in exemption of religious institution from taxation. Ann. Cas. 1912A, 354.

Exemption of cemetery or lot therein. Ann. Cas. 1912A, 1053.

§ 2500.

History of acts subjecting mines to taxation, and of acts exempting them. Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 296, 137 Pac. 386.

Mines and mining claims are, by article XII, section 3, of the Constitution, and by this section, subjected to their equitable proportion of the burden of governmental expense, to be raised by taxation. Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 297, 137 Pac. 386.

The taxing authorities are not authorized to impose any additional burden upon mining property before they ascertain whether the conditions justifying its imposition exist; the constitutional and statutory provision, respecting the taxation of mines, is really a revenue measure, and not an exemption provision, within the rule that he who alleges that his property is exempt from taxation must sustain the burden of establishing the exemption. Barnard Realty Co. v. City of Butte, 50 Mont. 159, 145 Pac. 946.

Taxation is the rule, exemption is the exception; and the burden is upon the party who claims an exemption to allege and prove the facts necessary to bring his property within the favored class. Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 304, 137 Pac. 386.

A "mine," independently of the surface, is, within the meaning of the Constitution and from the standpoint of raising revenue, a mineral deposit, whether metallic or nonmetallic, developed to the point of production and actually yielding, or capable of yielding, proceeds. Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 303, 137 Pac. 386.

A "mining claim," as used in the Constitution, indicates a tract of land to which the right of possession or the title has been acquired pursuant to the acts of Congress relating to the disposition of mineral lands, including coal lands. Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 303, 137 Pac. 386.

If land under which coal is believed to lie, is conveyed, with a reservation of all mineral, including coal, with the use of the necessary surface ground for exploring it, but no explorations are made, such reservation is not a "mine" or "mining claim," either within this section or article XII, section 3, of the Constitution, and does not fall within any class of exempt

property, but is an interest in "real estate," which is subject to assessment for taxation, in the absence of anything showing that it is valueless. Northern Pac. Ry. v. Mjelde, 48 Mont. 287, 304, 137 Pac. 386.

The surface ground of an unpatented mining claim, when used for other than mining purposes and when it has a separate value for such other purposes, is subject to taxation. Cobban v. Meagher, 42 Mont. 399, 409, 113 Pac. 290.

Though mining property is situated within the limits of a city, and has streets, and sewers running through it, the fact that these matters give the property an additional value to that which it has for mining purposes, does not authorize an increased taxation of the property, unless it appears that the owner has devoted it to a purpose other than mining. Barnard Realty Co. v. City of Butte, 50 Mont. 159, 145 Pac. 946.

When the state claims the right to tax a ditch that is appurtenant to placer mining claims, the burden is upon it to show that it has a value, separate and independent of such claims, and that it has a right to impose the tax. Hale v. County of Jefferson, 39 Mont. 137, 143, 101 Pac. 973.

A ditch, and the water conveyed therein for use on placer mining claims, are not taxable, unless it is shown that they have an independent value by reason of profitable use for some other purpose, and the value for that purpose would be determined by the amount of the profits; the fact that the ditch, together with the water conveyed by it, which has never been a source of any profit except as connected with such mining claim, could be sold and used for irrigating farm lands and for other purposes, and that it would be valuable for these purposes is not such a showing of an independent value by reason of a profitable use for some other purpose, as entitles the state to tax the ditch and water. Hale v. County of Jefferson, 39 Mont. 137, 142, 101 Pac. 973.

The net proceeds of mines are subject to taxation, but a nonproducing mine has no value. Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 301, 137 Pac. 386; and compare sections 2563-2571, post.

The net proceeds of all mines and mining claims are taxable the same as other personal property; and the assessor is not required to follow up such proceeds to insure the collection of the tax, or to rely upon the solvency of the person who receives the money; the tax, under section 2571, post, is a lien upon the mine from which the ores or minerals were extracted. Tong v. Maher, 45 Mont. 142, 145, 122 Pac. 279.

The net proceeds of a mine are assessable and taxable against the owner thereof, as personal property, whether the

statement required by section 2563, post, is made or not; all property must be assessed to the owner. *Tong v. Maher*, 45 Mont. 142, 145, 122 Pac. 279.

§ 2501.

Reservation of mineral land as interest in "real estate." See note, ante, § 2500.

This section determines the classification of property for purposes of taxation, and courts are limited by that classification in determining how property should be assessed. *Helena Water Works Co. v. Settles*, 37 Mont. 237, 239, 95 Pac. 838.

§ 2502.

Taxation of mines. See note, ante, § 2500.

Nature of fee demanded of corporations. See note, ante, § 165.

For purposes of taxation a water right is personal property. *Helena Water Works Co. v. Settles*, 37 Mont. 237, 95 Pac. 838.

Editorial Notes.

Validity of tax as affected by valuation of other property at lower proportion of actual value. *Ann. Cas.* 1912B, 872.

§ 2503. Assessment of Stock in Banking Corporations.

(Section 1.) All shares of stock in state and national banks and banking corporations, whether of issue or note, existing by authority of the United States or of this state, and located within this state, and doing business within the state shall be assessed to the owners thereof, in the cities, towns, or places where such banks and banking corporations herein named, are located and not elsewhere, in the assessment of all state, county, school districts, and municipal taxes, imposed and levied in such place, whether the owner is a resident of such city, town, or place or not; all such shares must be listed and assessed with regard to their value at 12 o'clock noon, on the first Monday of March of each year, to be ascertained by adding the surplus and undivided profits to the face value of such shares, provided, that if any portion of the capital stock of any bank or banking corporation herein named, shall be invested in real estate and such bank or banking corporation shall hold title thereto, the assessed valuation of such real estate shall be deducted from the total value of the shares of stock of such bank or banking corporation and such real estate shall be deducted from the total value of the shares of stock of such bank or banking corporation and such real estate shall be assessed to the bank or banking corporation holding the same, as other real estate. The persons or corporations who appear upon the records of the bank or banking corporation herein named, to be the owners of shares at the close of the business day next preceding the first Monday in March in each year, shall be taken and deemed to be the owners thereof for the purpose of this section. Such shares of stock shall not be assessed at any higher rate than other property and shall be subject to all deductions allowed or given in the assessment of other property. [Amendment approved February 26, 1915; Laws 1915, c. 31, p. 45.]

§ 2504. Payment of Taxes—Entry of Assessment.

(Section 2.) Such bank or banking corporation shall pay to the collector or other person authorized to collect the taxes of the state, county, city, town or place, in which the same is located at the time of each year when other taxes assessed in said state, county, city, town or place, become due, the amount of the tax so assessed in each year upon the shares in such bank or banking corporation herein referred to. The said bank or banking corporation herein referred to shall be liable for the payment of the said tax. If such is not paid on or before the 30th day of November of each year at 6 o'clock P. M., the said tax shall become delinquent and shall be col-

lected in the same manner and be subject to the same laws as all other delinquent taxes.

For convenience the assessment of shares of stock in banks and banking corporations herein referred to, shall be entered on the personal property assessment list under the name of the bank and in such statement the names of the holders of bank stock shall be set forth and the shares owned by each and such assessment when so entered, shall have all the force and effect as if made in the name and against the holder of bank stock individually. [Amendment approved February 26, 1915; Laws 1915, p. 46.]

§ 2505. Statements to be Furnished by Officers.

(Section 3.) The cashier of every such bank and the secretary or other officer corresponding to a cashier of any banking corporation herein referred to, shall make and deliver to the assessor of the county in which the said bank or banking corporation herein referred to is located, within five days after demand therefor, a statement verified by the oath of such cashier or secretary or other corresponding officer, showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of business, the day next preceding the first Monday in March in each year, as the same then appeared on the books of the bank or banking corporation; and shall furnish a further verified statement showing the face value of the capital stock and the amount of surplus and undivided profits of the bank or banking corporation and an estimate of the value for which such stock shall be assessed. If the cashier, secretary or corresponding officer fails to make the former statement, the assessor shall forthwith upon such failure, obtain from the officers of the bank or banking corporation, such list of shareholders with the residence and number of shares belonging to each and for which purpose he shall have access to the books of the bank or banking corporation and if the cashier or secretary or other corresponding officer fails to furnish the latter statement, the assessor shall make an assessment of such stock which will be as fair and equitable as he may be able to make from the best information available or he may adopt the figures disclosed by any prior report of the bank or banking corporation of its officers or directors to the comptroller of the currency or the state examiner or the Secretary of State, as the case may be. Any cashier, secretary or corresponding officer, failing to make such statements or either of them, shall be guilty of a misdemeanor and punished accordingly, provided that nothing herein shall be construed as authorizing or permitting the county assessor to place a higher valuation upon the shares of banks or banking corporations than that placed upon the same class or other classes of property. [Amendment approved February 26, 1915; Laws 1915, p. 46.]

§ 2505a. Repeal of Prior Sections.

Sections 2503, 2504 and 2505, Revised Codes of Montana, 1907, are hereby repealed. [Act approved February 26, 1915; Laws 1915, p. 47.]

§ 2510.

Effect of repeal of law, before day of assessment. See note, post, § 4073.

Property is to be assessed to the owner; the authorized capital stock of a corpora-

tion, engaged in a general real estate business, and not owning any of its capital stock, is not taxable, as such against the corporation. *Butte L. & I. Co. v. Sheehan*, 44 Mont. 371, 373, 120 Pac. 241.

§ 2521.

Debts due a foreign corporation, secured by mortgage on land in this state, do not have a situs here for the purposes of taxation. *Monidah Trust v. Sheehan*, 45 Mont. 424, 431, 123 Pac. 692.

Editorial Notes.

Place of taxation of partnership property. *Ann. Cas.* 1912B, 758.

§ 2526.

A water right of a corporation is properly assessed in a school district where its place of business and principal works are located, and into the limits of which the water is conveyed by pipe-line for distribution to the inhabitants thereof. *Helena Water Works Co. v. Settles*, 37 Mont. 237, 95 Pac. 838.

§ 2562a. Taxation of Insurance Companies.

(Section 1.) Every insurance company organized under the laws of the state of Montana shall be assessed and taxed upon its real estate and personal property at the same rate and in the same manner as other property is assessed and taxed in this state.

(Section 2.) In computing the taxable property of insurance companies organized under the laws of this state there shall be deducted therefrom the value of the real property on which the company pays taxes, such real estate being assessed to the company as other real estate; also the legal reserve required by the laws of this state, or by the insurance department thereof, for the protection of policy-holders; also all assets not admitted as such by the state, or by the insurance department thereof; also such debts and liabilities as may be due or owing by such company. [Approved March 4, 1915; Laws 1915, c. 64, p. 92.]

§ 2563.

Constitutional and statutory provisions as to taxation of mines. See note, ante, § 2500.

Effect, generally, of failure to make statement. See post, § 2568.

Failure to make statement, effect of, as to net proceeds. See note, ante, § 2500.

This section simply designates the person, corporation or association who shall make the statement for the information of the assessor. *Tong v. Maher*, 45 Mont. 142, 145, 122 Pac. 279.

Where the owner of a mine is entitled to a part of the proceeds thereof as a "royalty" or "rental," a tax upon such part should be imposed upon him, whether he is engaged in mining or not; all property must be assessed to the owner. *Tong v. Maher*, 45 Mont. 142, 122 Pac. 279.

§ 2568.

Assessment of net proceeds. See note, ante, § 2500.

§ 2528.

Legislative intent to maintain distinction between "railroads" and "street railroads." See note, post, § 3259.

§ 2529.

Legislative intent to maintain distinction between "railroads" and "street railroads." See note, post, § 3259.

§ 2530.

In an action against a county treasurer to recover taxes paid on certain cattle, a special verdict is insufficient to warrant judgment for the plaintiff. *Coburn Cattle Co. v. Small*, 35 Mont. 288, 293, 88 Pac. 953.

§ 2571.

Tax upon net proceeds, a lien upon the mine. See note, ante, § 2500.

§ 2600.

Nature of fee demanded of corporations. See note, ante, § 165.

Editorial Notes.

Effect of sale for one tax on lien of another tax. *Ann. Cas.* 1913A, 675.

Sale for tax as affecting lien. *Ann. Cas.* 1913A, 678.

Validity and construction of statute giving priority to tax lien. *Ann. Cas.* 1913B, 520.

§ 2609.

The limit of time fixed by law during which the annual roll must be completed is the first Monday in October. *Carlson v. City of Helena*, 39 Mont. 82, 103, 17 Ann. Cas. 1233, 102 Pac. 39.

§ 2638.

A statement in a deed conveying land sold to a county for taxes, that the property was offered for sale "in accordance with law," being merely a conclusion of law, imparts no validity to the deed if the recitals therein show that the sale was had at public auction at which the county was a competitive bidder. *Rush v. Lewis & Clark County*, 37 Mont. 240, 95 Pac. 836.

A tax deed, showing on its face that the county was a competitive bidder at the sale, is void. *Rush v. Lewis & Clark County*, 36 Mont. 566, 93 Pac. 945.

§ 2641.

Tax deed is conclusive evidence of what. See note, post, § 2654.

§ 2651.

Provisions such as appear in this section and in section 2652, post, are a limitation upon the power of the treasurer to issue the tax deed; and any deed issued by the treasurer, where such statutory requirements are not complied with, is void. *Cullen v. Western M. & W. Title Co.*, 47 Mont. 513, 527, 134 Pac. 302.

The affidavit, in particular, is the basis upon which the treasurer is to act; and

the conditions from which his power to issue the deed arises must appear by the affidavit; the affidavit is jurisdictional. *Cullen v. Western M. & W. Title Co.*, 47 Mont. 513, 527, 134 Pac. 302.

§ 2652.

Deed is void, when. See note ante, § 2651.

§ 2653.

Construction of conclusive evidence provision. See note, post, § 2654.

Where a tax deed shows on its face that it is void because the county was a competitive bidder at the sale, a grantee of the county cannot rely upon the presumption that official duty has been regularly performed, or that the property was sold as prescribed by law. *Rush v. Lewis & Clark County*, 36 Mont. 566, 93 Pac. 943.

Editorial Notes.

Sufficiency of tax deed with respect to designation of grantee. *Ann. Cas.* 1913A, 1195.

Tax certificate or deed made prima facie evidence of legality of assessment as cloud on title. *Ann. Cas.* 1914A, 892.

§ 2654. Tax Deeds—Conclusiveness and Annulment.

Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed, and no action can be maintained to set aside or annul a tax deed, upon any ground whatever, unless the action is commenced within two years from and after the date of issuance of such tax deed; provided, that any existing right of action to set aside or annul any tax deed, heretofore issued, shall be barred unless instituted within two years from and after the passage and approval of this act. [Amendment approved March 3, 1909; *Laws* 1909, p. 58.]

This section, as amended in 1909, is a statute of limitations, and must be pleaded in the answer by one seeking to take advantage of it. *Cullen v. Western M. & W. Title Co.*, 47 Mont. 513, 528, 134 Pac. 302.

The conclusive evidence provision in this section refers to acts and proceedings required to be done and had at the hands of public officials interested with the various steps leading up to the execution of the tax deed, and not to something required to be done by the applicant for the deed. *Cullen v. Western M. & W. Title Co.*, 47 Mont. 513, 527, 134 Pac. 302.

When land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership thereof affects the sale to render it void or voidable, such mistake be-

ing in the nature of an informality or irregularity only. *Cullen v. Western etc. Title Co.*, 47 Mont. 513, 523, 134 Pac. 302.

Editorial Notes.

Tax deeds as evidence. 17 Am. Dec. 505; 28 Am. St. Rep. 19; 2 L. R. A. 774.

Tax deeds, recitals in, effect of as evidence. 31 Am. St. Rep. 233.

Tax deeds, power of the legislature to make them prima facie or conclusive evidence. 4 Am. St. Rep. 187.

Sufficiency of tax deed with respect to designation of grantee. *Ann. Cas.* 1913A, 1195.

§ 2672.

If land is sold, as the property of a particular person, for taxes that have

been correctly imposed upon the land, no misnomer or other mistake relating to the ownership thereof affects the sale, or renders it void or voidable; such mistake being in the nature of an irregularity or

informality. *Cullen v. Western M. & W. Title Co.*, 47 Mont. 513, 524, 134 Pac. 302.

§ 2680.

See section 2682a, post.

§ 2682. Sale of Real Estate for Delinquent Taxes.

Whenever the county has become the purchaser of any real estate sold for delinquent taxes and the same has not been redeemed by the person entitled so to do, and the time for such redemption has expired, the board of county commissioners may, at any time, by an order made and duly entered upon the minutes of its proceedings sell the same at public auction, provided, however, that no such sale shall be made or confirmed unless the price offered shall be sufficient to discharge all accrued taxes to date of sale together with interest and cost, then the chairman of the board is authorized to execute a title therefor vesting in the purchaser all the title of state and county to the real estate so sold. The money arising from such sale must be paid into the county treasury, and the treasurer must settle for money so received as other state and county money. [Amendment approved March 8, 1909; Laws 1909, p. 175.]

§ 2682a. Redemption from Tax Sales.

In all cases where real estate has been sold for delinquent taxes, the purchaser at such tax sale, or his assignee, may, subsequent thereto, pay the subsequent taxes assessed against said land, and upon the redemption of said land from such tax sale, the redemptioner shall, in addition to the amount for which the said land was sold, with interest thereon, pay the subsequent taxes paid by the purchaser of such tax sale, or his assignee, with interest thereon at the rate of twelve per cent per annum from the date of the payment of such taxes, and in all notices of application for tax deed, the applicant shall state in addition to the amount paid at the tax sale, the amount of subsequent taxes paid by the applicant or his assignee upon such land, with interest thereon at the rate of twelve per cent per annum from the date of such payment, and no redemption shall be made until the amount of such sale, with interest and such subsequent taxes and interest shall have been paid by the person seeking to redeem such lands. [Approved March 15, 1913; Laws 1913, c. 98, p. 434.]

§ 2736a. Expenses of County Assessors and Deputies.

The assessor and his deputies in each county in this state shall be paid the actual and necessary traveling expenses by them incurred, not to exceed fifty dollars in any one month, during the months of March, April, May and June of each year while in the performance of official duty, upon presenting and filing a verified claim thereof, supported by vouchers, for each item of expense, to the board of county commissioners of their respective county. [Approved March 2, 1909; Laws 1909, c. 44, p. 53.]

§ 2736b. County Assessor—Chief Deputy.

The assessor in counties of the first class may appoint one chief deputy assessor, who shall receive a salary of eighteen hundred (\$1800) dollars per annum, in lieu of the regular deputy as now provided by law; and such assessor may also appoint such other deputy assessors for the months of March, April, May, June, July and August, as now provided by law. [Approved March 3, 1909; Laws 1909, c. 53, p. 60.]

§ 2741.

Construction of section. See note, post, § 2742.

This section, by necessary implication, provides a remedy by injunction in cases where the tax demanded is illegal or not authorized by law. *Cunningham v. Northwestern Imp. Co.*, 44 Mont. 180, 119 Pac. 554.

A court cannot restrain the collection of a tax levied on the surface of an unpatented mining claim, having a value for town-site purposes, because of the assessor's failure to set forth, in his assessment,

the fact that such surface ground was assessed for other than mining purposes by reason of its having a separate and independent value for town-site purposes; a mere irregularity in the method of assessment is not sufficient to give the court jurisdiction to enjoin the collection of the tax or the sale of the property. *Cobban v. Meagher*, 42 Mont. 399, 410, 113 Pac. 290.

Editorial Notes.

Injunction against sale of property for taxes. 69 Am. Dec. 193, 49 Am. Rep. 287; 23 Am. Rep. 622; 53 Am. Rep. 110.

§ 2742. Payment of Taxes Under Protest—Action to Recover.

That in all cases of levy of taxes, licenses, or other demands for public revenue, which are deemed unlawful, by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may pay under protest such tax or license, or any part thereof, deemed unlawful, to the officers designated and authorized to collect same; and thereupon, the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officer to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, to recover such tax or license, or any portion thereof, paid under protest; provided, that any action instituted to recover any tax paid under protest, shall be commenced within sixty days after the thirtieth day of November, of the year in which such tax was paid. The tax so paid under protest, shall be held by the county treasurer, and no part thereof paid to the state treasurer until the determination of any action brought for the recovery thereof; and provided further, that in all cases where taxes, licenses or other demands have been paid under protest, during the year 1907, or 1908, and no suit has been brought to recover the same, action to recover the same as herein provided shall be brought within sixty days after the passage and approval of this act; and if not so brought, the same shall be forever barred. [Amendment approved March 10, 1909; Laws 1909, p. 201.]

Suit within time as essence of right. See note, post, § 2743.

This section is applicable to unauthorized demands by the state auditor. *Cunningham v. Northwestern Imp. Co.*, 44 Mont. 180, 119 Pac. 554.

The amendment of 1909, to this section, providing that an action to recover taxes paid under protest must be commenced within sixty days after November 30th of the year in which the taxes are paid, applies generally to any action instituted to recover any tax paid under protest. *Dolenty v. Broadwater County*, 45 Mont. 261, 265, 122 Pac. 919.

An action to recover an unlawful license fee, exacted by a city ordinance, and paid under protest, is properly brought under this section; the plaintiff is not required to resort to the remedy provided in section 2741, ante; the remedy in equity, under section 2741, is lim-

ited; but this section, 2742, gives a cause of action, at law, in all cases where taxes are paid under protest, the remedy being unlimited. *Reilly v. Hatheway*, 46 Mont. 1, 11, 125 Pac. 417.

It is possible for taxes to be paid under protest and contested for reasons other than those referred to in section 2743, and it was, doubtless, for the purpose of covering such cases that the amendment of 1909, to this section, 2742, was made, and a uniform rule established covering all causes of actions to recover taxes paid under protest. *Dolenty v. Broadwater County*, 45 Mont. 261, 265, 122 Pac. 919.

If the owner of the surface of an unpatented mining claim objects to its assessment for town-site purposes, he has a remedy by paying the taxes under protest, and then suing for their recovery, under section 2745, post, in an action at law, and the remedy thus provided is, made by section 2745, post, to supersede

all others. *Cobban v. Meagher*, 42 Mont. 399, 410, 113 Pac. 290.

The legislature apparently assumed that taxes might be paid under protest and contested for reasons other than those referred to in section 2743, and it was for the purpose of covering such cases that the statute was passed amending section 2742, thus establishing a uniform rule for all actions to recover taxes paid under protest. *Dolenty v. Broadwater County*, 45 Mont. 261, 265, 122 Pac. 919.

If the taxing authorities undertake to levy a tax not authorized by law or upon property not subject to be taxed, their action is without jurisdiction and void. *Clark v. Maher*, 34 Mont. 391, 87 Pac. 272. The taxpayer may enjoin the collection even after disregarding a notice by the assessor or the board to file timely objection. *Barnard Realty Co. v. City of Butte*, 50 Mont. 167, 145 Pac. 946.

Editorial Notes.

Recovery by taxpayer of taxes paid. 22 Am. Dec. 519; 45 Am. Dec. 164; 94 Am. St. Rep. 425.

Payment of tax to avoid imposition of penalty (including forfeiture of right to do business) as involuntary payment. Ann. Cas. 1913C, 1052.

Necessity that protest against payment of tax should specify grounds thereof. Ann. Cas. 1913D, 568; 36 L. R. A. (N. S.) 476.

The provision of this section, prescribing a limit upon the time for bringing an action, is something more than a mere statute of limitation; it is of the essence of the right to sue. *Dolenty v. Broadwater County*, 45 Mont. 261, 266, 122 Pac. 919.

This section, before its amendment in 1909, containing a limitation of time as

to the bringing of an action to recover taxes paid under protest, applied only to actions brought to recover taxes paid under protest for any of the reasons mentioned in the section; and such is its application since the amendment. *Dolenty v. Broadwater County*, 45 Mont. 261, 265, 122 Pac. 919.

Whenever a statute grants a right that did not exist at common law, and prescribes the time within which the right must be exercised, the limitation thus imposed does not affect the remedy merely, but is of the essence of the right itself; and one who seeks to enforce such right must show affirmatively that he has brought his action within the time fixed by the statute; if he does not do so, he fails to disclose any right to relief under the statute. *Dolenty v. Broadwater County*, 45 Mont. 261, 267, 122 Pac. 919.

The right to sue for taxes paid under protest is purely statutory; without the statute, the right would not exist; and, where the statute that confers the right fixes the time within which it must be exercised and the grounds upon which it may be asserted, the statute must be complied with or the right is lost. *Dolenty v. Broadwater County*, 45 Mont. 261, 266, 122 Pac. 919.

After the right to sue, under this section, was lost by a failure to sue within the time prescribed, such right could not be recreated by the legislature, as it attempted to do by the retroactive amendment of 1909, it was prohibited by the Constitution. *Dolenty v. Broadwater County*, 45 Mont. 261, 268, 122 Pac. 919.

Notwithstanding this section, as amended in 1909, and section 2745, post, an injunction lies to restrain the collection of a tax wholly void. *Barnard Realty Co. v. City of Butte*, 50 Mont. 167, 145 Pac. 946.

§ 2743. Assessment for Taxation—Increase Over Statement of Owner.

Whenever any person has delivered to the assessor a sworn statement of his property subject to taxation as now provided by law, and giving the estimated value of such property, and the assessor shall increase such estimated value, or add property to such assessment list, he shall at least ten days prior to the meeting of the county board of equalization, give to such person written notice of such change, which notice shall be substantially in the following form:

(Date)....

Mr.

A change has been made in your assessment list as follows:

Assessor, County.

Such person may then appear before the county board of equalization, ascertain the nature of such change, and contest the same; and if the assessment of any such person has been added to or changed, either by the assessor or by the county board of equalization, and such person has not been notified thereof and given an opportunity to contest the same before the county

board of equalization, the tax of such increased value or added property shall, upon such facts being established, be adjudged by the court to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in said section 2742 (4024) of the Political Code. When any person has appeared before the county board of equalization, and has contested the increase in the estimated value of his property, or the additions of other property to his assessment list, and is aggrieved at the final action of the board in making or allowing such increase or addition, he may, in the action provided for in said section 2742 (4024) of the Political Code, contest and litigate the payment of taxes on such increased valuation or added property list on the same grounds and for the same reasons that he has contested the same before the county board of equalization, and for no other reason and on no other reason and on no other ground. Provided, that any action instituted for the purpose of recovering any tax paid under protest for any of the reasons mentioned in this section shall be commenced within sixty days after the thirtieth day of November, of the year in which such tax was paid. Provided, further, that when any action is instituted to recover any tax paid the valuation of the property as increased by the board of equalization or assessor, is an over-valuation of such property, the jury in the case shall determine the actual value of such property at the time the same became liable for taxes, and if the value as fixed by the jury is in excess of the amount on which taxes were levied, the plaintiff shall be liable in damages equal to the product obtained by multiplying such excess valuation as found by the jury by the rate per cent at which taxes were levied in the municipality where the property was assessed for the year the protest was made. [Amendment approved March 10, 1909; Laws 1909, p. 202.]

§ 2745.

Injunction to prevent collection of void tax. See note ante, § 2743.

LICENSES.

§ 2746. License Blanks to be Furnished by County Clerk.

The county clerk must prepare and have printed blank licenses of all classes mentioned in this chapter, with the blank receipt attached for the signature of the county treasurer, when sold. The printer shall deliver to the clerk of the court all the license blanks ordered, with bill for same, showing forms and numbers. The clerk of the court shall verify same, record in book the forms and numbers, then deliver said licenses to the county clerk, taking his receipt for same in the record book. The county clerk shall keep all license blanks delivered to him under lock and key and be accountable for same. [Amendment approved February 26, 1909; Laws 1909, p. 39.]

§ 2759.

One who wishes to carry on the business of selling liquor at a place outside the corporate limits of a city or town, must apply to the county commissioners for a license to do so, and the matter of granting it is one addressed to the discretion of the board. *State v. Barnett*, 49 Mont. 252, 257, 141 Pac. 287.

Editorial Notes.

Right to assign or transfer liquor license. Ann. Cas. 1913A, 461.

Consent of abutting owners to issuance of liquor license. 1 Ann. Cas. 60.

§ 2760.

License to sell liquor outside of city or town. See note, ante, § 2759.

Amendment of, though not so designated. *State v. Barnett*, 49 Mont. 252, 253, 141 Pac. 287.

§ 2761. Liquor License not to Issue as Matter of Right.

Nothing herein contained shall be construed so as to require the board of county commissioners to issue any such order for a license as a matter of right, but such license may be ordered issued entirely within the discretion of said board of county commissioners, provided that no license shall be issued to any person not a citizen of the United States of America, nor to any company, or corporation not authorized to do business under the laws of Montana. [Amendment approved March 17, 1913; Laws 1913, p. 461.]

§ 2763a. Itinerant Venders to Obtain License.

(Section 1.) Every person, company or corporation, who at temporary quarters sells or offers or exhibits for sale any goods, wares or merchandise, and every person who travels about from place to place and transports by any mode of conveyance and sells, offers or exhibits for sale any goods, wares or merchandise, and every person who personally solicits orders for the future delivery of any goods, wares or merchandise, either by or without sample, including peddlers and hawkers, is an itinerant vender within the meaning of this act; provided, however, that this section shall not apply to wholesale dealers selling to dealers or merchants, nor shall it apply to any person or the representative of any person, company or corporation, doing business at a fixed place of business and taking orders for the future delivery of any goods, wares or merchandise, kept at or in connection with and handled through such fixed place of business, nor shall it apply to the sale of books, papers or school supplies or the sale of any fruits, vegetables, meats or other farm produce when sold by the grower or producer thereof.

(Section 2.) A "person, company or corporation doing business at a fixed place of business," within the meaning of this act, is any person, company or corporation who keeps, offers or exposes for sale to the general public, in a building of permanent nature any goods, wares or merchandise of any description; provided, however, that this definition must not be construed as including any person, company or corporation keeping any goods, wares or merchandise, or transacting any such business in any rented apartment or apartments, in any hotel, boarding-house, lodging-house, or private residence, or in any other building or structure not designated for or commonly used as a store or shop.

(Section 3.) Every person, company or corporation desiring to do business in any county in this state as an itinerant vender must, before commencing such business, obtain a license from the treasurer of such county, for which he shall pay as follows:

If such itinerant vender travels on foot and sells, offers or exhibits for sale only such goods, wares or merchandise as he carries upon his person, the sum of twelve dollars and fifty cents, (\$12.50) per quarter.

If such itinerant vender travels or carries and sells, or offers or exhibits for sale any goods, wares, or merchandise, by any other mode than walking and carrying such goods, wares or merchandise upon his person, the sum of one hundred dollars, (\$100) per quarter.

(Section 4.) Any person, company or corporation desiring to obtain a license under the provisions of this act must file with the county treasurer of each county in which he desires to do business an application in writing, subscribed and sworn to by such applicant before an officer in this state authorized to take oaths, which application shall set forth the name of

the applicant, his residence and principal place of doing business, the business for which he asks the license; whether he is acting as principal, or as agent, and if acting as agent, the name and place of business of his principal, and such applicant must at the time of filing such application as above provided, pay to the county treasurer with whom such application is filed, the sum specified in section 3 hereof as a quarterly license for conducting and transacting such business.

(Section 5.) Upon filing of the application required by section 4 of this act, in proper form, and upon the payment to him of the sum required by section 3 of this act, the county treasurer shall issue to such applicant a license to carry on the business described in such application, in the county in which such license is so issued, for the period of three months from and after the first day of the month in which such license is so issued, which license shall be nontransferable, and shall have printed across the face thereof in large letters the word "Nontransferable."

The county treasurer shall indorse upon each application the date of issuance of the license, and shall file such application, with the county clerk and recorder of his county, who shall file the same and keep an appropriate index thereof, which shall show the date filed, the name of the applicant, his address and the business for which the license is issued, and an appropriate reference to the file number and the number of the file box in which said application may be found. Such index and such application shall be open to the inspection of any person during the regular office hours in the county clerk's office.

(Section 6.) Every such itinerant vender doing business under the provisions of this act must, upon demand of any citizen of this state, exhibit his license and permit the same to be then and there read by the citizen making such demand; and any such itinerant vender who shall willfully refuse or fail to exhibit his license as above provided is guilty of a misdemeanor, and shall be fined not less than ten dollars, (\$10), nor more than twenty-five dollars, (\$25) for each offense.

(Section 7.) Every itinerant vender as herein defined, doing business without first obtaining a license in any case where a license is required by this act, is guilty of a misdemeanor, and shall be punished as provided in the Penal Code.

(Section 8.) Nothing in this act contained is intended to operate so as to interfere with the power of the Congress of the United States to regulate commerce between the states as such power is defined by the supreme court of the United States. [Approved March 6, 1911; Laws 1911, c. 110, p. 197.]

§ 2773. Licenses by Telephone, Telegraph, Electric and Gas Companies.

Every person, corporation or association doing business in this state as a telephone, telegraph or electric company must pay a license in each county where such business is transacted as follows:

Each gas and electric company doing business in cities of more than ten thousand population shall pay a license of two hundred dollars (\$200) per year; in cities of five thousand and less than ten thousand population a license of one hundred (\$100) dollars per year; in cities of less than five thousand a license of fifty dollars (\$50) per year; and where such companies are consolidated such license shall be paid for each department.

Every telephone company doing business in cities of more than ten thousand population shall pay a license of four hundred dollars (\$400) per year; in cities of more than five thousand and less than ten thousand population a license of two hundred dollars (\$200) per year; and in cities of less than five thousand population a license of one hundred dollars (\$100) per year.

Each telegraph company shall pay a license of five dollars (\$5) per quarter for each instrument in use.

Every person, company or corporation selling water in incorporated cities of more than ten thousand population shall pay a license of four hundred dollars (\$400) per year; in cities of more than five thousand and less than ten thousand population shall pay a license of two hundred dollars (\$200) per year; and in cities of less than five thousand population shall pay a license of one hundred dollars (\$100) per year; and in towns fifty dollars (\$50) per year, and where such companies are consolidated such license shall be paid for each department; provided, however, that no license shall be exacted from any person, company, or corporation selling water by delivery in packages, cans, bottles, barrels or otherwise than by pipes, conduits, ditches or canals. [Amendment approved March 1, 1911; Laws 1911, p. 124.]

The first paragraph of this section is not violative of the state Constitution, nor is it repugnant to the interstate commerce clause of the federal Constitution. *State v. Hammond Packing Co.*, 45 Mont. 343, 354, 123 Pac. 407.

This section is not unconstitutional; the classification is reasonable and does not offend the equal protection clause of the fourteenth amendment; a state may restrict the manufacture of oleomargarine, or even forbid its manufacture altogether, and may carry out its policy in a revenue law as well as in a police law. *Hammond Packing Co. v. State of Montana*, 233 U. S. 331, 58 L. Ed. 985, 34 Sup. Ct. Rep. 596; affirming 45 Mont. 343, 123 Pac. 407.

§ 2776.

If a state deems it advisable to put a lighter burden upon women than upon men with regard to an employment commonly regarded, by our people, as more appropriate for the former, the fourteenth amendment to the federal Constitution does not interfere by creating a fictitious equality where there is a real difference; the particular points at which that differ-

ence shall be emphasized by legislation are largely in the power of the state. *Quong Wing v. Kirkendall*, 39 Mont. 64, 101 Pac. 250; affirmed in 223 U. S. 59, 63, 56 L. Ed. 350, 32 Sup. Ct. Rep. 192.

Assuming that this section classifies laundries for license purposes, into steam laundries and laundries operated by hand, such classification is not arbitrary or unwarrantable. *Quong Wing v. Kirkendall*, 39 Mont. 64, 68, 101 Pac. 250; affirmed in 223 U. S. 59, 63, 56 L. Ed. 350, 32 Sup. Ct. Rep. 192.

This section is not unconstitutional because of the exemption from its operation of women engaged in the laundry business, where not more than two are employed or kept at work; the difference in the sexes justifies a difference in legislation. *Quong Wing v. Kirkendall*, 39 Mont. 64, 72, 101 Pac. 250; affirmed in 223 U. S. 59, 63, 56 L. Ed. 350, 32 Sup. Ct. Rep. 192.

When a controversy presents a federal question, the judgment of the supreme court of the United States as to it is conclusive upon a state supreme court. *Quong Wing v. Kirkendall*, 47 Mont. 16, 130 Pac. 2.

§ 2780a. License on Sleeping-car Company.

Every person, association or corporation engaged in the business of operating sleeping-cars carrying passengers from one point to another within the state of Montana shall pay into the state treasury, on or before the first day of January of each year, a license tax of one hundred dollars for each car used by it in the conduct of such business.

Every such person, association or corporation shall annually, on the 31st day of December of each year, file in the office of the state treasurer a statement of the number of such cars used by it during the year preced-

ing in the conduct of such business and the names of such cars, as far as the same have names, which statement shall be verified by the oath of some officer of the corporation, testifying of his own knowledge as to the facts therein stated. [Approved March 11, 1911; Laws 1911, c. 141, p. 424.]

§ 2780b. Moving Picture Shows—Amount of License.

No license shall be required for the operation or exhibition of moving picture shows in any city, town or village where the population does not exceed one thousand five hundred. In all other cities the license shall be \$25 per year. [Approved March 13, 1913; Laws 1913, c. 81, p. 344.]

§ 2780c. License to Sell Coal.

(Section 1.) That it shall be unlawful for any person, persons, association or corporation, to knowingly expose for sale or sell within the state of Montana, without first having obtained from the Secretary of State a license to sell any coal as hereinafter provided.

(Section 2.) Every person, persons, association or corporation desiring to act as agent for or to sell at retail, coal within the limits of the state of Montana, shall make an application in writing to the Secretary of State, setting forth his or their residence, together with the names of two or more responsible citizens of the state of Montana as references.

(Section 3.) The Secretary of State shall thereupon issue a license for such applicant for one year, except as hereinafter provided, which license shall set forth the name of the person, persons, association or corporation, and be kept conspicuously posted in his, their or its place of business.

(Section 4.) Every person, persons, association or corporation shall pay annually, upon the issuance of such license as hereinbefore provided, the sum of one dollar (\$1) to the Secretary of State as a license fee.

(Section 5.) Licenses shall be for one year unless revoked as subsequently provided herein.

(Section 6.) In all sales of coal the seller must give to the purchaser full weight at the rate of two thousand pounds to the ton.

(Section 7.) The Secretary of State shall have power to revoke the license of any person, persons, association or corporation upon conviction of a second violation of any law regulating the sale of coal within the state of Montana; but no such revocation shall be made until due notice to the person, persons, association or corporation so complained of, is given; and for the purpose of this section the said Secretary of State, or his authorized agents, shall have power to administer oaths and compel the attendance of persons, and the production of books, papers, etc.

(Section 8.) No person, association or corporation shall be permitted to misrepresent to the public respecting any coal offered for sale, nor to sell coal of any particular name or from any particular mine under the name or designation of another coal or mine.

(Section 9.) Any person offending against the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), and not less than fifty dollars (\$50) or to be imprisoned for a term not exceeding six months in the county jail, or by both such fine and imprisonment.

(Section 10.) All acts and parts of acts in conflict herewith are hereby repealed. [Approved March 4, 1911; Laws 1911, c. 80, p. 147.]

§ 2780d. Venders of Nursery Stock and Fruit Trees to Obtain License and File Bond.

(Section 1.) Every person who, as the agent of person, firm, corporation or nursery not holding a Montana license, shall solicit orders for or sell within the state of Montana, any nursery stock, fruit trees, plants, vines, scions or cuttings, shall first obtain a license therefor from the state board of horticulture of the state of Montana, which license shall extend for the period of one year from the date of issuance thereof; and the fee charged therefor shall be the sum of ten dollars (\$10).

(Section 2.) The money so received from such licenses shall be remitted to the state treasurer and disposed of in the manner provided in section 1944 of the Revised Codes of 1907, as the same is amended by Chapter 121 of the Session Laws of the Twelfth Legislative Assembly of the State of Montana.

(Section 3.) Every person who is required to obtain a license as provided in this act, shall, prior to the issuance of such license to him, execute to and file with the state board of horticulture a bond in the sum of one thousand dollars (\$1,000), with two approved sureties, or a bond of some approved surety company to the effect that the stock sold by him shall be healthy and of the kind and quality ordered by the purchaser, and is as represented by such person acting as such agent.

(Section 4.) Every person who shall, without first obtaining such license, sell or solicit orders for any of the nursery stock named in section 1 of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100), or by imprisonment in the county jail not more than thirty (30) days, or by both such fine and imprisonment.

(Section 5.) All acts and parts of acts in conflict with this act be, and the same are hereby repealed. [Approved March 15, 1913; Laws 1913, c. 99, p. 435.]

LIQUOR LICENSES AND REGULATIONS.

§ 2780f. Limitation on Number of Liquor Licenses to be Issued in Cities.

(Section 1.) That Chapter 35 of the Session Laws of the Thirteenth Legislative Assembly of the state of Montana be amended to read as follows:

(Section 1.) It shall be unlawful for any county or city in this state to issue more than one license for every five hundred (500) inhabitants in any city, town, village, camp, or settlement, whether incorporated or unincorporated, to any retail liquor dealer, that is a person who sells spirituous, malt, or fermented liquors or wine in less quantity than one quart. [Approved March 5, 1915; Laws 1915, c. 87, p. 113.]

§ 2780g. Places Where County Shall not Grant Licenses—Hotels.

(Section 2.) From and after December 31, 1915, it shall be unlawful for any county in this state to issue a license to any retail liquor dealer, that is, a person who sells spirituous, malt or fermented liquor or wine in less quantity than one quart, in any place having a population of less than fifty (50) inhabitants who are bona fide residents for at least six months within a radius of one-quarter ($\frac{1}{4}$) mile of the location of the license; provided, that the county treasurer shall refund the unexpired portion of such licenses bearing an expiration date later than December 31, 1915; and further provided, that this section shall not apply to hotels, regularly oper-

ated as such, where such hotels have twenty (20) or more sleeping-rooms. [Approved March 5, 1915; Laws 1915, c. 87, p. 113.]

§ 2780h. Effect of Act on Persons Now Licensed—Transfer of Licenses.

(Section 3.) This act [§§ 2780a-2780f herein], in so far as it limits the issuance of licenses for the sale, or the offering for sale, of spirituous, malt or fermented liquors, or wine, in less quantity than one quart, shall not affect any person, company or corporation now regularly licensed, nor the party to whom such license may be transferred, to sell or offer for sale any spirituous, malt or fermented liquors, or wine, in quantities of less than one quart, or the reissuance or transfer of a license to such person, in accordance with the existing laws upon this subject, except in places where the inhabitants are less than fifty (50) as described in section 2 of this act. [Approved March 5, 1915; Laws 1915, c. 87, p. 113.]

§ 2780i. Licenses for Places not Within Incorporated City or Town—Proceedings to Obtain.

(Section 4.) Every person who desires to engage in the business of a retail liquor dealer, that is, a person who sells spirituous, malt or fermented liquor or wine in less quantity than one quart, in any place not within the corporate limits of an incorporated city or town, must obtain a license from the county treasurer. Before the county treasurer shall issue such new license to the person making application for the same as a new license, in any place not within the corporate limits of an incorporated city or town, a petition shall first be filed and presented to the board of county commissioners of the county in which such person intends to engage in business, signed by at least twenty (20) freeholders, resident outside of the corporate limits of any incorporated city or town, and within a radius of five (5) miles of a proposed location of the license, said petition to be a request for the issuance of such license to the person, firm or corporation presenting the same. Upon the filing of such a petition with the board of county commissioners, they must set the same down for hearing for a time within thirty (30) days, and cause notice of such hearing to be given by having notices posted, for at least ten (10) days, in at least three (3) public places within the five (5) mile radius before described. Upon the day fixed in the notice for the consideration of the petition, the county commissioners shall meet and determine the sufficiency of the petition, and whether or not the license shall be issued. If a protest is filed against the issuance of such a license, signed by at least twenty (20) freeholders resident outside of the corporate limits of any incorporated city or town within a radius of five (5) miles of the proposed location of the license, the county commissioners shall proceed to hear the matter upon the petition and protest, and, if necessary, appoint a further day for the hearing of the petition for a license and protest, and after such hearing determine, in their discretion, whether or not such license shall be issued. From the decision of the board of county commissioners the applicant for license whether a protest be filed or not, or the protestants against the issuance thereof, may appeal to the district court of said county, within thirty (30) days after the decision of the board of county commissioners. The appeal shall be taken and heard in the same manner as appeals from the justice courts to the district court, and the same shall be determined without delay. [Approved March 5, 1915; Laws 1915, c. 87, p. 114.]

§ 2780j. Renewal of License and Proceedings Therefor.

(Section 5.) Whenever the holder of a retail liquor license, as herein defined, shall desire a renewal thereof to conduct such retail liquor business in the same location, not within the corporate limits of an incorporated city or town, the county treasurer shall issue such license without requiring a petition therefor, unless he shall receive an order from the county commissioners to notify the applicant that a new petition will be required, in which event the applicant for renewal must petition for the same, as required in section 4 of this act, and to all intents and purposes as though it were an application for a new license; and further provided, that it shall be subject to the same conditions and procedure as to a protest thereon as is provided for protests against the issuance or reissuance of a license. The applicant for renewal under this section shall be permitted to continue in business pending a final determination of his application, unless for good cause shown, and upon the complaint of the county attorney or sheriff, it shall appear to the best interests of the community involved to close the applicant's place of business, pending the final determination of the application, in which event the county commissioners may so order it. And upon the final hearing of the application, or application and protest, it shall be discretionary with the board to grant such a renewal of license or refuse the same. From the decision of the board of county commissioners, the holder of a license, or the protestants against the issuance thereof, may appeal to the district court of said county within thirty (30) days after the decision of the board of county commissioners. The appeal shall be taken and heard in the same manner as provided in the section foregoing. In case the board of county commissioners decide that such license may be reissued by the county treasurer, he shall reissue the same, and it shall be in force and effect until the decision of the board of county commissioners is reversed by the action of the district court to which said appeal is taken. In every case where a protest is filed the board of county commissioners shall, if possible, hear and determine the same, before the date of the expiration of the license, the issuance of which is protested against; provided, that nothing in sections 4 and 5 of this act shall be construed as affecting any pending applications for, or protests against the issuance of any license under the provisions of existing laws. [Approved March 5, 1915; Laws 1915, c. 87, p. 114.]

§ 2780k. Violation Law—Punishment—Second Conviction.

(Section 6.) That upon the conviction of any person engaged in the business of a retail liquor dealer, that is, a person who sells spirituous, malt or fermented liquor or wine in less quantity than one quart, for a penal offense against the laws of the state of Montana, occurring in the place of business of such person, and relating to such business, such person shall be punishable in accordance with existing laws upon the subject, and as hereinafter provided.

That upon a second conviction of any person engaged in the business of a retail liquor dealer, that is, a person who sells spirituous, malt or fermented liquor or wine in less quantity than one quart, for a penal offense against the laws of the state of Montana, occurring in the place of business of such person, and relating to such business, the license of such person, company or corporation, so convicted, shall be suspended by virtue of second conviction, and such person, company or corporation shall not be entitled to obtain or hold, in his name, or the name of any other person, company

or corporation, any license for the sale of any spirituous, malt or fermented liquor, or wine, at retail for a period of three (3) months after such conviction; and upon a third conviction shall not be entitled to any license for the sale of spirituous, malt or fermented liquor, or wine at retail, within the state of Montana.

(Section 7.) All acts and parts of acts in conflict herewith are hereby repealed. [Approved March 5, 1915; Laws 1915, c. 87, p. 115.]

The following decisions have been rendered by the supreme court in construing Chapter 35 of Laws of 1913:

The appeal of persons who have filed the formal protest against the application for license to sell liquor at retail, when such protest has been overruled by the board, cannot be instituted by filing a notice of appeal with the clerk of the court that is to review the case. *State v. District Court*, 48 Mont. 477, 478 et seq., 138 Pac. 1100.

The act of 1911, Chapter 92, which in effect amended section 2760, of the Revised

Codes, was itself amended by this act, not touching, however, the question of the authority of the county treasurer to write into the license a limitation upon the applicant to sell only at wholesale. *State ex rel. Frost v. Barnett*, 49 Mont. 252, 257, 141 Pac. 287.

The theory upon which the statute proceeds is that the question whether a license shall issue for the conduct of the saloon business in any unincorporated place is one which primarily concerns the immediate community. *State ex rel. More v. District Court*, 49 Mont. 578 et seq., 143 Pac. 1193.

§ 2781m. Limitation on Right of Social Clubs to Dispose of Liquors—Penalty for Violation of Law.

(Section 1.) From and after the passage of this act, it shall be unlawful for any club organized for social or literary purposes whether incorporated or unincorporated, to barter, sell, give away or dispose of in any manner, either to members of such social club, members' guests, or to any other person, any intoxicating liquors or beverages of any kind or character; provided, that this shall not be construed as prohibiting not to exceed one such incorporated social club for every three thousand inhabitants located within the jurisdiction of an incorporated city or town from selling and disposing of liquors and beverages, to its members only, under the same regulations and restrictions other than license fees as are now or may hereafter be provided by the laws of the state of Montana and provided further that not to exceed eight such clubs shall be permitted in any city or town within the state of Montana, provided that this act shall not affect social clubs in incorporated cities or towns now organized and in existence, in which intoxicating liquors and beverages are disposed of to members of such social club, upon any such social club complying with the provisions of this act.

(Section 2.) Before any such club shall be entitled to barter, sell, give away or dispose of any intoxicating liquors to the members, members' guests, or to any other person, they shall obtain a permit from the city or town council, which permit shall be kept in a conspicuous place at all times. The city or town council shall have full power within their discretion to grant or refuse permits to any such club.

If the city or town council deem it for the best interest, upon it being made to appear to them that any club now in existence, or hereafter organized is not a bona fide club or association and that any club is a society or association organized to evade the law relating to liquor licenses, such permit shall be revoked and annulled by a majority of the city or town council. Whenever any permit is revoked the city or town clerk shall in writing, by registered mail, notify the holders of such permit and thereafter such permit shall be void and of no effect.

(Section 3.) Any person or persons who shall barter, sell, or give away, any intoxicating liquors or beverages or who shall conduct any room or place where intoxicating liquors are kept or disposed of, as such social club, other than as herein provided, shall upon conviction be fined in the sum of not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300). [Approved March 5, 1915; Laws 1915, c. 80, p. 106.]

COUNTY BOUNDARIES.

§ 2788. Change of Boundary of Missoula and Powell Counties.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That there be and hereby is, established and created, a change in the county line of the county of Missoula, so that the boundary of Missoula county shall be changed as follows:

"Commencing at a point on the east line of Missoula county at the point where the county line between Powell and Granite counties departs therefrom in section fifteen (15), township twelve (12) north of Montana base, and range fifteen (15) west of the Montana meridian; and thence extending east along said county boundary of Powell and Granite counties to the point where said county boundary intersects the north and south line between ranges thirteen (13) and fourteen (14) west of Montana meridian and extending thence north on said line between ranges thirteen (13) and fourteen (14) aforesaid to the north line of township sixteen (16) north, being the fourth standard parallel north of the state of Montana, and thence due west to the east line of Missoula county, thence due south to the place of beginning."

(Section 2.) From and after the enactment and approval of this act, all of the territory described hereinabove shall be and become a part of Missoula county, Montana, and shall be taken from Powell county aforesaid and added to Missoula county aforesaid.

Provided that the said county of Missoula shall pay or secure the payment to said Powell county from the general fund of said county, the sum of ten thousand six hundred seventy-eight and fifty one hundredths dollars (\$10,678.50), the said sum being the value of the property in roads, bridges and other improvements owned by said Powell county within the limits of the said above described territory to be transferred to said Missoula county and provided further that when said payment has been made, or satisfactorily arranged for, the county clerk of Powell county shall certify the fact of such payment to the county clerk of Missoula county, whereupon the property within said territory above described shall be and become the property of Missoula county and the territory hereinabove described shall be and become a part of Missoula county for all purposes. [Approved February 27, 1915; Laws 1915, c. 46, p. 69.]

§ 2791. Beaverhead County Boundaries.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That the boundaries of Beaverhead county are hereby changed and defined as follows: Beginning at a point on the first standard parallel south at the northwest corner of section 3, township 6 south of range 7 west; thence south, on the present boundary between Beaverhead and Madison counties eighteen (18) miles to a point which when surveyed will be the northwest corner section 3, township 9 south, range 7 west;

thence east six (6) miles, more or less, to the northeast corner section 4, township 9 south, range 6 west; thence south six (6) miles, more or less, to the northeast corner section 4, township 10 south, range 6 west; thence east seven (7) miles, more or less, to the northeast corner section 3, township 10 south, range 5 west; thence south six (6) miles, more or less, to the southeast corner section 34, township 10 south, range 5 west; thence east one mile to the southeast corner section 35, township 10 south, range 5 west; thence south 6 miles, more or less, to a point which when surveyed will be the southeast corner section 35, township 11 south, range 5 west; thence east five (5) miles to a point which when surveyed will be the northeast corner section 3, township 12 south, range 4 west; thence south three (3) miles to a point which when surveyed will be the northeast corner section 22, township 12 south, range 4 west; thence east fourteen (14) miles, more or less, to a point, which when surveyed, will be the northeast corner section 24, township 12 south, range 2 west; thence south five (5) miles, more or less, to the northeast corner section 13, township 13 south, range 2 west; thence east sixteen (16) miles, more or less, on what will be the lines of the legal subdivision of the public surveys when surveyed, to the point of intersection with the boundary line between Montana and Idaho at the top of the divide of the main range of Rocky Mountains; thence in a general westerly and northwesterly direction along the top of said divide of the main range of the Bitter Root Mountains, which is here the boundary line between the state of Montana and the state of Idaho, to a point six (6) miles, more or less, northwest to the crossing of Dehalonega Pass, where the crest of the Continental Divide of the main range of the Rocky Mountains joins said divide of the main range of the Bitter Root Mountains; thence following in a general northeasterly direction along the top of said Continental Divide of the main range of the Rocky Mountains to the closest point above the commencement of the main drain of Rock creek; thence along the middle of the channel of said Rock creek in a southerly direction to a point in the center of the main channel of the Big Hole river directly opposite to the center of the outlet of said Rock creek; thence down stream along the center of the main channel of the Big Hole river in an easterly and southerly direction to the point where said middle channel of said Big Hole river crosses the east boundary of section 31, township 4 south of range 7 west; thence from the intersection of said lines taking a direct course to Beaverhead Rock; thence south to the southeast corner of section 33, township 5 south of range 7 west; said corner being a monument on the first standard parallel south; thence east along said standard parallel to the northeast corner of section 4, township 6 south of range 7 west and place of beginning.

Madison County Boundaries.

(Section 2.) That the boundaries of Madison county are hereby changed and defined as follows:

Beginning at Beaverhead Rock on Beaverhead river between sections 21 and 22 in township 5 south of range 7 west; thence south to the southwest corner of section 34, township 5 south of range 7 west, said corner being a monument on the first standard parallel south; thence east on said second parallel to the northwest corner of section 3, township 6 south of range 7 west; thence south eighteen (18) miles to a point which when surveyed will be the northwest corner of section 3, township 9 south, range 7 west; thence east six (6) miles, more or less, to the northeast corner section

4, township 9 south, range 6 west; thence south six (6) miles, more or less, to the northeast corner section 4, township 10 south, range 6 west; thence east seven (7) miles, more or less, to the northeast corner section 3, township 10 south, range 5 west; thence south six (6) miles, more or less, to the southeast corner section 34, township 10 south, range 5 west; thence east one (1) mile to the southeast corner section 35, township 10 south, range 5 west; thence south six (6) miles, more or less, to the point which when surveyed will be the southeast corner section 35, township 11 south, range 5 west; thence east five (5) miles to a point which when surveyed will be the northeast corner section 3, township 12 south, range 4 west; thence south three (3) miles to a point which when surveyed will be the northeast corner section 22, township 12 south, range 4 west; thence east fourteen (14) miles, more or less, to a point which when surveyed will be the northeast corner section 24, township 12 south, range 2 west; thence south five (5) miles, more or less, to the northeast corner section 13, township 13 south, range 2 west; thence east sixteen (16) miles, more or less, on what will be the lines of the legal subdivision of the public surveys when surveyed to the point of intersection with the boundary line between Montana and Idaho at the top of the divide of the main range of the Rocky Mountains; thence in a general northeasterly course five (5) miles, more or less, following along the top of said divide of the main range of the Bitter Root Mountains to the point from which the present east boundary line of Madison county diverges north; thence in a right line north to the point on the crest of the ridge or divide separating the drains of the Galatin and Madison rivers, from which a right line diverges west; thence west along said right line to Foreman's Crossing of the Madison river; thence in a right line northwesterly to the mouth of the Big Canyon of Willow creek; thence on a right line northwesterly to a point in the center of the channel of the Jefferson river directly opposite the center of the mouth of the Boulder river; thence up a stream in the center of the channel of the Jefferson river to Parson's Bridge on said Jefferson river; thence in a right line west to the top of the Table Mountain; thence in a right line to the right hand fork of Camp creek; thence in a southwesterly direction down said Camp creek in the center of the channel to a point in the center of the channel of the Big Hole river opposite the center of the mouth of Camp creek; thence in a southerly direction down stream in the center of the channel of said Big Hole river to its nearest point to Beaverhead Rock, which is at the intersection of said river with the east boundary of section 32, township 4 south of range 7 east; thence southeasterly in a right line to Beaverhead Rock and place of beginning.

Indebtedness of Madison County to be Apportioned.

(Section 3.) That all of the indebtedness of Madison county as the same shall exist at the date of the approval of this act shall be apportioned between the county of Madison and the county of Beaverhead by first deducting from said indebtedness the amount of all moneys on hand and the amount of all moneys belonging to said Madison county and the remainder of said indebtedness shall be apportioned between the respective counties in the proportion which the amount of taxable property in Madison county bears to the amount of taxable property contained in the territory hereby annexed to Beaverhead county; said amount of indebtedness to be ascertained by a commission consisting of the board of county commissioners of

Madison county and Beaverhead county and the judge of department No. 2 of the second judicial district of the state of Montana, which said commission shall meet in the courthouse in the city of Virginia City, on the 20th day of March, 1911, and shall take as a standard for said apportionment of indebtedness the assessment for the year 1910, as determined by the board of equalization of Madison county.

Duty of Commissioners of Beaverhead upon Adjustment of Indebtedness—Warrants.

(Section 4.) That upon the adjustment of the said indebtedness it shall be the duty of the county commissioners of Beaverhead county to be caused to be made out, issued and delivered to the county commissioners of Madison county, warrants for any amount found to be due said Madison county, which warrants upon presentation, if the same shall not be immediately paid, shall be indorsed by the treasurer of Beaverhead county, "Not paid for want of funds" and shall thereafter draw interest as other county warrants.

Treasurer of Madison to Pay Over School Moneys.

(Section 5.) It is hereby made the duty of the county treasurer of Madison county to transfer and pay over on or before the 1st day of June, 1911, all moneys in said Madison county to the credit of school districts embraced within the limits of the territory hereby taken from said county of Madison and included within the county of Beaverhead, which said moneys so transferred shall be held by the county of Beaverhead to the credit and for the use of the same school districts as they formerly existed.

Compensation of Judge.

(Section 6.) That the judge of department No. 2 of the second judicial district of the state of Montana, for his services in acting upon said commission, shall receive the sum of twenty-five dollars (\$25) per day for the time he shall act in that capacity, and his necessary traveling expenses which shall be paid by the county of Beaverhead upon his verified claim presented to the board of county commissioners of said county.

(Section 7.) All acts and parts of acts in conflict herewith are hereby repealed.

(Section 8.) This act shall be in full force and effect from and after its passage and approval. [Approved March 2, 1911; Laws 1911, c. 73, p. 137.]

§ 2801. Boundaries of Gallatin and Adjoining Counties.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That section 2801 of the Revised Codes of the state of Montana of the year 1907, be, and the same is hereby amended to read as follows:

(Section 2801.) That all that portion of the state of Montana embraced within the following boundaries shall be known as, and shall be Gallatin county, in the state of Montana, to wit:

Beginning at the intersection of the Continental Divide, the same being the boundary line between the state of Montana and the state of Idaho, with what will be when it is surveyed, a line two miles east of the west line of township 13 south, range 3 east; thence northerly along said line to the southwest corner of section 33, township 9 south, range 3 east; thence north

along the section line to the northwest corner of section 4, township 8 south, range 3 east; thence along what will be when surveyed the west line of sections 33, 28, 21, 16, 9 and 4, township 7 south, range 3 east to the southwest corner of section 33, township 6 south, range 3 east; thence north along the section lines to the northwest corner of section 9, township 6 south, range 3 east; thence north to what will be, when surveyed, the northwest corner of section 4, township 6 south, range 3 east; thence east along the first standard parallel south to what will be, when surveyed, the southwest corner of section 34, township 5 south, range 3 east; thence north along what will be when surveyed, the west line of sections 34, 27, 22, 15, 10 and 3 to the northwest corner of section 3, township 5 south, range 3 east; thence north along the section line to the southwest corner of section 22, township 2 south, range 3 east; thence west along the section line to the southwest corner of section 19, township 2 south, range 2 east; thence north to the southeast corner of section 13; thence west to the southwest corner of section 13; thence north to the northwest corner of section 13; thence west to the southwest corner of section 11; thence north to the northwest corner of section 11; thence west to the southwest corner of section 3; thence north to the northwest corner of section 3, all in township 2 south, range 1 east; thence west to the southwest corner of section 33; thence north to the northwest corner of section 33; thence west to the southwest corner of section 29; thence north to the northwest corner of section 29; thence west to the southwest corner of section 19; thence north to the northwest corner of section 19, all in township 1 south, range 1 east; thence west along the section line to the southwest corner of section 15; thence north along the section line to the northwest corner of section 10; thence west along the section line to the southwest corner of section 5; thence north to the northwest corner of section 5; thence west along the north line of section 6 to the northwest corner thereof, all in township 1 south, range 1 west; thence west along the south line of section 36, township 1 north, range 2 west, to the southwest corner thereof; thence north along the west line of said section 36 to a point in the center of the main channel of the Jefferson river; thence down the middle of the Jefferson river to its mouth; thence down the middle of the Missouri river to the intersection with a curve line 500 feet southeasterly from the main line of the Chicago, Milwaukee and St. Paul Railroad where the same crosses the Missouri river; thence in a generally northeasterly direction 500 feet distant from the parallel to the center line of the Chicago, Milwaukee and St. Paul Railroad to the west line of section 9, township 4 north, range 3 east; thence north along said west line to a point therein 500 feet distant from, in a northerly direction,—the center line of the said Chicago, Milwaukee and St. Paul Railroad; thence in a general northeasterly direction parallel to and 500 feet distant from the center line of Chicago, Milwaukee and St. Paul Railroad to the west line of section 3, township 4 north, range 3 east, thence north along the west boundary of section 3, to the northwest corner thereof; thence east along the first standard parallel north to the southwest corner of section 34, township 5 north, range 3 east; thence north along the section line to the west quarter corner of section 15, township 5 north, range 3 east; thence east along the half section line to the east quarter corner of section 13, township 5 north, range 4 east, thence north to what will be when the same is surveyed the west quarter corner of section 18, township 5 north, range 5 east; thence east through what will be, when the same is

surveyed, the centers of sections 18, 17, 16, 15, 14, and 13, township 5 north, range 5 east, to the west quarter corner of section 18, township 5 north, range 6 east; thence east along the half section line to the east quarter corner of section 13, township 5 north, range 7 east; thence south along the township line to the southeast corner of township 5 north, range 7 east; thence west along the first standard parallel north to the northeast corner of township 4 north, range 7 east; thence south along the township line to the southeast corner of township 1 north, range 7 east; thence west along the base line to the northeast corner of township 1 south, range 7 east; thence south along the township line to the east quarter corner of section 12, township 3 south, range 7 east; thence west through the center of sections 12, 11, and 10 to the east quarter corner of section 9; thence south along the section line to the southeast corner of section 33, township 3 south, range 7 east; thence west to the southeast corner of township 3 south, range 6 east; thence south to what will be when the same is surveyed the southwest corner of township 5 south, range 7 east; thence west to what will be when the same is surveyed, the northwest corner of township 6 south, range 6 east; thence south along what will be the township line, when the same is surveyed, to the north boundary of the Yellowstone National Park; thence west along the said north boundary to the northwest corner of the Yellowstone National Park; thence south along the west boundary of the Yellowstone National Park to its intersection with the Continental Divide, the same being the boundary line between the state of Montana and the state of Idaho; thence northwesterly along said Continental Divide to the point of beginning.

(Section 2.) That the boundaries of Madison county, of Broadwater county, of Meagher county, and of Park county are hereby altered so as to conform to the boundaries of Gallatin county as established by this act in so far as Gallatin county constitutes a part of the boundaries of Madison county, of Broadwater county, of Meagher county, and of Park county. [Amendment approved March 8, 1913; Laws 1913, p. 113.]

§ 2820. Boundaries of Flathead County.

Be it enacted by the legislative assembly of the State of Montana:

That all that portion of the state of Montana embraced within the following boundaries shall be known as and shall be Flathead county, in the state of Montana, to wit:

Commencing on the forty-ninth parallel of latitude at a point where the same is intersected by the summit of the main range of the Rocky Mountains; thence in a southerly direction following the summit of said mountain range to an intersection with the south line of the north tier of sections of township 21 north; thence running westerly along said line to the corner common to sections 5, 6, 7, and 8 in township 21 north, range 23 west of the Montana principal meridian; thence running north ten miles along the section line situated one mile east of the line dividing range 23 west and range 24 west to the southeast corner of section 18, in township 23 north, range 23 west; thence running west along the section line one mile to the southwest corner of said section 18; thence running north on the range line to the sixth standard parallel north; thence west and along said parallel to the southeast corner of section 31, township 25 north, range 27 west; thence north along said section line to the southeast corner of section 18, township 26 north, range 26 west, thence west one mile to the

southwest corner of said section 18, thence north to the northeast corner of township 27 north, range 27 west; thence west to the southwest corner of section 34, in township 28 north of range 27 west; thence north to the northwest corner of section 3 in township 28 north, range 27 west; thence east to the southeast corner of township 29 north, range 26 west; thence north along the Horse Plains Guide meridian to the northeast corner of township 32 north, range 26 west; thence west to the southeast corner of township 33 north, range 26 west; thence north along the Horse Plains Guide meridian to the northeast corner of township 33 north, range 26 west; thence east about twelve miles to the summit of the watershed dividing the Stillwater river and White Fish creek; thence in a northwesterly direction along said watershed to its intersection with the forty-ninth parallel of latitude; thence east along said parallel to the place of beginning. [Amendment approved February 28, 1913; Laws 1913, p. 58.]

§ 2821. Boundaries of Flathead, Missoula and Sanders Counties.

The boundaries of Flathead, Missoula and Sanders counties are hereby altered so as to conform to the boundaries as established by this act. [This and the preceding section.] [Amendment approved February 28, 1913; Laws 1913, p. 59.]

§ 2832. Boundaries of Sweet Grass and Stillwater Counties—Indebtedness and Fiscal Affairs—Compensation of Judges.

Be it enacted by the legislative assembly of the State of Montana:

(Section 1.) That there is hereby withdrawn from the territory of the county of Stillwater, Montana, of which it is now a part and annexed to and made a part of the county of Sweet Grass, Montana, the following described territory, to wit: Sections five (5), six (6), seven (7), eight (8), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32) of township two (2) and also townships three (3) and four (4) north of range eighteen (18), east of Montana principal meridian.

That there is hereby withdrawn from the territory of the county of Sweet Grass, Montana, of which it is now a part and annexed to and made a part of the county of Stillwater, Montana, the following described territory, to wit: Unsurveyed townships six (6) and seven (7) south of range fifteen (15) east and unsurveyed townships six (6) and seven (7) south of range fourteen (14) east as the same will appear after official survey, the said townships lying and being situated at present in the extreme southeast corner of Sweet Grass county.

(Section 2.) The boundaries of Stillwater county are hereby so changed and defined as to exclude from the limits of said Stillwater county the territory first mentioned and described in section 1 hereof hereby annexed to Sweet Grass county and the boundaries of said Sweet Grass county are so changed and defined as to include within the limits of said Stillwater county the territory so annexed to it and so as to exclude from the limits of said Sweet Grass county the territory mentioned and described in section 1 hereof, which is hereby annexed and made a part of Stillwater county; and that otherwise the boundaries of said respective counties shall be and remain the same as heretofore.

(Section 3.) That the net indebtedness of Sweet Grass county and of Stillwater county as the same shall exist on the date of the approval of this

act shall be first ascertained by deducting from the total indebtedness of each of said counties on said date the amount of all moneys on hand and the amount of all moneys, belonging to each of said counties and said net indebtedness shall be apportioned between said county of Stillwater and said county of Sweet Grass by apportioning to Sweet Grass county such part thereof as the amount of taxable property in the territory hereby annexed to Sweet Grass bears to the entire amount of taxable property in Stillwater county including that in the territory so annexed to Sweet Grass county; and by apportioning to Stillwater county such proportion of the indebtedness as the amount of taxable property in the territory hereby annexed to Stillwater county bears to the entire amount of taxable property in Sweet Grass county including that in the territory so annexed to Stillwater county. Said amount of indebtedness shall be ascertained and apportioned by a commission consisting of the chairman of the board of county commissioners of Sweet Grass county and chairman of the board of county commissioners of Stillwater county together with the judge of the sixth judicial district of the state of Montana, which said commission shall meet at the courthouse in the city of Big Timber on or before the twentieth day of March, 1915, and shall take as the standard for said apportionment of said indebtedness the assessment for the year 1914 as fixed and determined by the boards of equalization of Sweet Grass and Stillwater counties.

(Section 4.) That upon adjustment of said indebtedness it shall be the duty of the county commissioners of the county which is found to be indebted to the other in consequence of the exchange of territory herein provided for, to cause to be made out, issued and delivered to the county commissioners of the county sustaining loss in consequence of such exchange of territory and apportionment, bonds or warrants for the amount found to be due in accordance with the findings and report of such commission. In the event that county warrants are issued, if the same are not paid immediately upon presentation they shall be indorsed by the county treasurer of the county obligated "Not paid for want of funds" and shall thereafter draw interest as other county warrants.

(Section 5.) It is hereby made the duty of the county treasurer of Stillwater county to transfer and pay over on or before the first day of June, 1915, all moneys in said Stillwater county to the credit of school districts embraced within the limits of the territory hereby taken from said county of Stillwater and included in the county of Sweet Grass, which said moneys so transferred shall be held by the county of Sweet Grass to the credit and for the use of the same school districts as they formerly existed. It is hereby made the duty of the county treasurer of Sweet Grass county to transfer and pay over on or before the first day of June, 1915, all moneys in said Sweet Grass county to the credit of the school districts embraced within the territory hereby taken from said county of Sweet Grass and included within the county of Stillwater which said moneys so transferred shall be held by the county of Stillwater to the credit and for the use of the same school districts as they formerly existed.

(Section 6.) That the judge of the sixth judicial district for the state of Montana, for his services in acting upon said commission, shall receive in addition to his salary as fixed by law, the sum of twenty (20) dollars per day for the time that he shall actually be employed in the work of said commission and also his necessary traveling expenses, which shall be paid as may be directed by said commission by either the county of Sweet Grass or

the county of Stillwater, or in part by each of said counties upon presentation of verified claims to the board of county commissioners required to pay such expenses. [Approved March 5, 1915; Laws 1915, c. 74, p. 100.]

§ 2841. Boundaries of Sanders County.

Be it enacted by the legislative assembly of the State of Montana:

(Section 1.) That the boundaries of Sanders county be and the same are hereby changed and defined as follows:

Beginning at a point in the center of the main channel of the Flathead or Pend d'Oreille river, where said river intersects the boundary line of the counties of Missoula and Flathead; running thence southerly along the center of the main channel of the said Flathead or Pend d'Oreille river to its intersection with the south boundary line of township 19 north of range 21 west, said point being approximately two miles east of the southwest corner of said township, thence east on the line between townships 18 and 19 north to the point where said line intersects the line between ranges 20 and 21 west, thence south on said line between ranges 20 and 21 west, to the summit of the range of mountains dividing the waters of the Missoula and Pend d'Oreille or Flathead rivers; thence westerly along said summit of the Coeur d'Alene Mountains to a point where said summit intersects the summit of the watershed dividing the waters of the Missoula and Clark's Fork rivers, thence westerly along said summit dividing the waters of the Missoula and Clark's Fork rivers to the point where said summit intersects the Horse Plains Guide meridian, thence due north along said Horse Plains Guide meridian to the northeast corner of section 25 in township 18, north of range 26 west, thence due west three miles to the southwest corner of section 22, in said township and range, thence due north one mile to the northeast corner of section 21 in said township and range, thence due west to the line between ranges 26 and 27 west, thence north on the line between ranges 26 and 27 west, to the summit of the Coeur d'Alene Mountains; thence westerly along the summit of said Coeur d'Alene Mountains to the boundary line between the state of Montana and the state of Idaho, and northerly along said boundary line to the south boundary of Lincoln and Flathead county, state of Montana; thence easterly along the boundary line of Flathead county to the place of beginning.

Missoula County; Boundaries of Changed to Conform With Boundaries of Sanders.

(Section 2.) That the boundaries of Missoula county be and the same are hereby changed to conform to the boundaries of Sanders county as defined by this act. [Approved February 25, 1911; Laws 1911, c. 54, p. 90.]

§ 2843a. Boundary Between Richland and Wibaux Counties.

Be it enacted by the legislative assembly of the State of Montana:

That the boundary line between Richland county and Wibaux county, state of Montana, is by this act established, and shall be hereby known as follows:

Beginning at a point on the right bank of the Yellowstone river where the south boundary line of township 19 north, range 57 east intersects said river; thence easterly on the township line to the southwest corner of fractional township 19 north, range 60 east; thence north on township line

between range 59 and range 60 east, to the corner of sections 13 and 24, township 19 north, range 59 east and sections 18 and 19, township 19 north, range 60 east; thence easterly on section line to the Montana-North Dakota boundary.

All acts and parts of acts in conflict herewith are hereby repealed. [New section approved February 19, 1915; Laws 1915, c. 24, p. 32.]

§ 2843b. Creation of Lincoln County.*

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That all that portion of the state of Montana embraced within the following boundaries shall be known as, and shall be Lincoln county, in the state of Montana, to wit:

Beginning on the forty-eighth parallel of latitude in township 26 north between ranges 26 and 27 west, thence north to the northeast corner of township 27 north range 27 west, thence west to the southwest corner of section 34 township 28 north range 27 west, thence north to the northwest corner of section 3 township 28 north range 27 west, thence east to the southeast corner of township 29 north range 26 west, thence north along the Horse Plains Guide meridian to the northeast corner of township 32 north range 26 west, thence west to the southeast corner of township 33 north range 26 west, thence north along the Horse Plains Guide meridian to the northeast corner of township 33 north range 26 west, thence east about twelve miles to the summit of the watershed dividing the Stillwater river and White Fish creek, thence in a northwesterly direction along said watershed to its intersection with the international boundary line, thence west along said boundary line to the northwest corner of the state of Montana, thence south on the boundary line between Montana and Idaho to the summit of the Cabinet Mountain range, thence in a southeasterly direction along said range to the forty-eighth parallel of latitude, thence east along said parallel of latitude to the place of beginning.

(Section 2.) That for judicial purposes the said county of Lincoln shall become attached to and become a part of the eleventh judicial district of the state of Montana.

(Section 3.) That the town of Libby, situate within the boundaries above mentioned, shall be the county seat of said county of Lincoln, until the county seat of said county shall be designated as hereinafter provided. And for the purpose of definitely fixing and creating the county seat of the county hereby created, the board of county commissioners of Lincoln county shall cause to be inserted in the official ballots, when printed for the general election held the first Tuesday after the first Monday in November, A. D. 1910, at the foot of the names of the candidates, or nominees thereon, the following: "For the county seat of Lincoln county," and the electors, when voting at the said general election at the time hereinbefore mentioned shall declare their vote upon said proposition by inserting in the blank space upon their ballots herein provided for, the name of some one town within said county of Lincoln, and when the name of a town shall be so inserted in the space by an elector, and the ballots have been cast as provided by law, the name shall be deemed a vote for the designated town as the place of the permanent county seat of Lincoln county, and upon a canvass of the said ballots the town having the highest

*The boundaries of Lincoln county have been changed. See § 2843c, post.

number of ballots shall be declared by the canvassing board the county seat of Lincoln county, which result shall be entered in the office of the county clerk and recorder of said Lincoln county, and from the date of such declaration of result, the town selected shall be and remain, until lawfully changed, the county seat of Lincoln county. All laws of a general nature applicable to the several counties of the state of Montana, and the officers thereof, shall be made applicable to said county of Lincoln, and the officers who may hereafter be elected, or appointed, therein, except as otherwise provided in this act.

(Section 4.) That all the indebtedness of Flathead county, as the same shall exist on the first day of January, 1909, shall be apportioned between the county of Flathead and the county of Lincoln by first deducting from said indebtedness the amount of all moneys on hand and the amount of all moneys belonging to the said Flathead county and also deducting the values of all real and personal property within or belonging to the said Flathead county on the said first day of January, 1909; and the remainder of said indebtedness shall be apportioned between the respective counties in proportion to the amount of taxable property in Flathead county, and the taxable property in Lincoln county, and heretofore within the boundaries of Flathead county; said amount of taxable property to be ascertained, and said apportionment and valuation of county property to be made by a commission consisting of the boards of county commissioners of Flathead county and Lincoln county, and the judge of the eleventh judicial district of the state of Montana, which said commission shall meet at the courthouse in the city of Kalispell on the first Tuesday of July, 1909, and shall take as a standard for said apportionment of indebtedness the assessment for the year 1908 as determined by the board of equalization of said Flathead county.

(Section 5.) That the treasurer of Flathead county shall at the time of the adjustment, as provided in section 4 of this act, make out and transmit to the county commissioners of Lincoln county, a list of all delinquent taxes and amounts of uncollected taxes within the limits of Lincoln county, as above defined; provided, that no delinquent taxes due the county of Flathead shall be considered in the adjustment of the debt, as hereinbefore provided; but it shall be the duty of the treasurer of Flathead county to collect such delinquent taxes as may be due said county and to turn over, within thirty days after making such collection, to the treasurer of Lincoln county a pro rata share of such taxes as he may be able to collect. It is further provided that should there be a surplus of funds in the hands of the treasurer of Flathead county, after the adjustment hereinbefore provided, said surplus shall be divided between the respective counties of Flathead and Lincoln in the same manner as herein provided for dividing the indebtedness.

(Section 6.) That upon the adjustment of said indebtedness, it shall be the duty of the county commissioners of Lincoln county, to cause to be made out, issued and delivered to the county commissioners of Flathead county, warrants for any amount found due said Flathead county, which warrants, upon presentation, shall be indorsed by treasurer of Lincoln county, "not paid for want of funds," and shall thereafter draw interest as other county warrants.

(Section 7.) The county commissioners of the county of Lincoln, for the purpose of paying any indebtedness which may be incurred, by reason

of assuming any of the indebtedness of Flathead county, are hereby authorized and empowered to cause to be issued, and to sell at not less than par, the bonds of said county of Lincoln in an amount equal to said indebtedness so incurred, in the manner provided for by law for the issuing and sale of county bonds.

(Section 8.) It is hereby made the duty of the county treasurer of Flathead county, to transfer and pay over on or before the first day of July, 1909, all moneys in said Flathead county, to the credit of school districts embraced within the limits of said county of Lincoln, as may have been hereby taken from said county of Flathead, which said moneys so transferred shall be held by the treasurer of said county of Lincoln, to the credit and for the use of the same school districts as they formerly existed.

(Section 9.) That the county commissioners of said Lincoln county are hereby empowered, and it shall be their duty, to contract with the lowest responsible bidder, for transcribing and indexing all records of property lying and being within the limits of the county of Lincoln, and all other public records, which transcripts, when compiled, shall be compared with the original records by the county clerk of Flathead county, and when correct shall be by him so certified under his official seal, and thereafter the records so transcribed and certified to shall be received and admitted in evidence in all courts of law in the state, and be in all respects entitled to like faith and credit as said original records. The county clerk of Flathead county shall receive for his services in comparing and certifying to the correctness of the copies of said records, five dollars (\$5) per day while engaged in said labor, which amount shall be paid by the county of Lincoln on the completion of said labor.

(Section 10.) The following named persons are hereby appointed to fill the offices set opposite their names:

Elzeor Demers.....	County commissioner.
Walter Wilder.....	County commissioner.
Paul Pratt.....	County commissioner.
M. Brandenburg.....	Treasurer.
M. A. Shannahan.....	Sheriff.
James Stonechest.....	Assessor.
Philip R. Long.....	Clerk of the district court.
R. T. Fleek.....	Clerk and recorder.
.....	County attorney.
F. D. Head.....	Superintendent of schools.
Sam Raderkin.....	County surveyor.
M. J. Brown.....	Public administrator.
Dr. A. D. Bogardus.....	Coroner.

All of said officers shall have power, and perform the same duties, and be entitled to the same privileges, as are by law conferred upon like officers in other counties, and shall hold their respective offices until after the next general election, or until their successors are duly elected and qualified. Said officers, however, before entering upon their duties, shall severally give bonds, and take the oath, as required of the county officers of other counties of this state, and said bonds shall be filed, as by law required, and approved by the state auditor.

(Section 11.) That the officers appointed and mentioned herein in section 10 of this act, shall each be allowed to receive an annual compensation for their services as such officers, as follows, to wit:

For each county commissioner, the sum of six dollars (\$6) per day, when in actual session, not exceeding the sum of two hundred and fifty dollars (\$250) per year.

Treasurer.....	Twelve hundred dollars.
Sheriff.....	Fifteen hundred dollars.
Clerk and recorder.....	Twelve hundred dollars.
Assessor.....	Twelve hundred dollars.
Clerk of the district court.....	Twelve hundred dollars.
Superintendent of schools.....	

by the Revised Codes of 1907 of Montana, who shall hold their respective offices until their successors are elected and qualified. And all township and precinct officers, road supervisors, officers of school districts, and all other officers, within and for the county of Lincoln, whose election or appointment is not provided for, shall, or may continue to hold office and exercise the duties pertaining thereto until the expiration of the term for which said officers were elected or appointed.

(Section 13.) No courthouse shall be constructed by said county of Lincoln until the said county seat is, as hereinbefore provided, fixed, and the valuation of assessed property within said county shall exceed the sum of three million dollars.

(Section 14.) The county boundaries of Flathead county are hereby altered so as to conform to the boundaries of Lincoln county as established by this act. [Approved March 9, 1909; Laws 1909, c. 133, p. 93.]

A legislative enactment for the creation of a new county, provided it is in form sufficient to designate the boundaries of the county proposed and provide for its organization and government, is not on its face defective or uncertain so that it cannot be carried into practice. *State ex rel. Gregg v. Erickson*, 39 Mont. 280, 102 Pac. 336.

Any contention that the act, in provid-

ing for an election to determine the location of a county seat for the new county, violates the constitutional doctrine that "the legislature shall not pass local or special laws . . . locating or changing county seats," has no bearing, since the provision does not relate to a county seat already located or to a county already fully created. *State ex rel. Geiger v. Long*, 43 Mont. 401, 408, 117 Pac. 104.

§ 2843c. Boundaries of Lincoln and Adjoining Counties.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That the boundaries of Lincoln county, Montana, be and the same are hereby fixed, defined and determined as follows:

Beginning at the southeast corner of section 12, township 26 north range 27 west Montana principal meridian and running thence west about seven miles on section lines to an intersection with the summit of the watershed dividing the waters flowing into the Kootenai and Clarks Fork of the Columbia rivers, and commonly designated the Cabinet range of mountains; thence first southerly and thence in a westerly and northerly direction along the crest or summit of said watershed to the point of intersection with the state boundary line between Montana and Idaho; thence north along said state boundary line to the northwest corner of Montana; thence east along the international boundary line to the point of intersection with the summit of the watershed dividing the Kootenai and Stillwater drainage on the west and the Flathead and Whitefish drainage on the east; thence in a southeasterly direction along the summit of said watershed to the point of intersection of said watershed with the north township line of township 33 north extended; thence west along said township line about twelve miles

to the northeast corner of township 33 north range 26 west; thence south along the Horse Plains Guide meridian to the southeast corner of township 33 north range 26 west; thence east to the northeast corner of township 32 north range 26 west; thence south along the Horse Plains Guide meridian to the southeast corner of township 29 north range 26 west; thence west to the northwest corner of section 3 township 28 north range 27 west; thence south to the southwest corner of section 34, township 28 north range 27 west; thence east to the northwest corner of section 6 township 27 north range 26 west; thence south to the place of beginning.

(Section 2.) That the boundaries of any and all counties adjoining or adjacent to the said Lincoln county are hereby changed and altered to conform to the boundaries of Lincoln county as defined by this act. [Approved March 1, 1913; Laws 1913, c. 46, p. 66.]

§ 2843d. Creation of Musselshell County Boundaries.

(Section 1.) That all that portion of the state of Montana embraced within the following boundaries shall be known as, and shall be, Musselshell county, in the state of Montana, to wit: Beginning at a point where the middle of the Musselshell river intersects the north line of township 11 north range 31 east, M. M., and thence west to the northwest corner of township 11 north, range 19 east. Thence south along the line between ranges 18 and 19 to the southwest corner of township 5 north, range 19 east; thence east to the southeast corner of township 5 north, range 26 east; thence north to the southeast corner of section 25 of township 6 north, range 26 east; thence east to the southeast corner of section 29 of township 6 north, range 27 east; thence north to the southeast corner of section 20 of township 6 north, range 27 east; thence east to the southeast corner of section 22 of township 6 north or range 27 east; thence north to the northeast corner of section 22 of township 6 north, range 27 east; thence east to the southeast corner of section 13 of township 6 north, range 29 east; thence north to the northeast corner of township 6 north, range 29 east; thence east to the southeast corner of section 31 of township 7 north, range 30 east; thence north to the southwest corner of section 20, township 7 north, range 30 east; thence east to the southeast corner of section 20, township 7 north, range 30 east; thence north to the northeast corner of section 20, township 7 north, range 30 east; thence east to the southeast corner of section 16 of township 7 north, range 30 east; thence north to the northeast corner of section 16 of township 7 north, range 30 east; thence east to the southeast corner of section 10 of township 7 north, range 30 east; thence north to the northeast corner of section 10 of township 7 north, range 30 east; thence east to the southeast corner of section 2 of township 7 north, range 30 east; thence north to the northeast corner of section 2, township 7 north, range 30 east; thence east to the southeast corner of township 8 north, range 31 east; thence north along the line between ranges 31 and 32 east to its intersection with the boundary line between Rosebud and Yellowstone counties; thence in a northwesterly direction following the boundary line between Rosebud and Yellowstone counties, to a point where the old Stanley road crosses the Musselshell river; thence following the Musselshell river downstream, to a point where the Musselshell river crosses the north line of township 11 north of range 31 east, and place of beginning.

Attached to the Thirteenth Judicial District.

(Section 2.) That for judicial purposes the said county of Musselshell shall be attached to, and become a part of, the thirteenth judicial district of the state of Montana.

County Seat.

(Section 3.) That the city of Roundup, situate within the boundaries above mentioned, shall be the county seat of the said county of Musselshell until the county seat shall be designated as hereinafter provided. And for the purpose of definitely fixing and creating the county seat of the county hereby created, the board of county commissioners of Musselshell county shall cause to be inserted in the official ballots, when printed for the general election to be held the first Tuesday after the first Monday in November, A. D. 1912, at the foot of the names of the candidates, or nominees thereon, the following: "For the county seat of Musselshell county, . . .," and the electors, when voting at the said general election at the time hereinbefore mentioned shall declare their vote upon said proposition, by inserting in the blank space upon their ballots herein provided for, the name of some town or city within the said county of Musselshell, and when the name of a town or city shall be so inserted in this space by an elector, and the ballots have been cast as provided by law, the name shall be deemed a vote for the designated town or city as the place of a permanent county seat of Musselshell county, and upon a canvass of said ballots the town or city having the highest number of ballots shall be declared by the canvassing board, the county seat of Musselshell county, which result shall be entered in the office of the county clerk and recorder of said Musselshell county, and from the date of such declaration of result the town or city selected shall be and remain, until lawfully changed, the county seat of Musselshell county. All laws of a general nature applicable to the several counties of the state of Montana, and officers thereof shall be made applicable to said county of Musselshell, and the officers who may hereafter be elected, or appointed therein except as otherwise provided in this act.

(Section 4.) That all the indebtedness of Fergus county as the same shall exist on the first day of January, 1911, shall be apportioned between the county of Fergus and the county of Musselshell, by first deducting from said indebtedness the amount of all moneys on hand, and the amount of all moneys belonging to the said Fergus county, and also deducting the value of the real and personal property, within or belonging to the said Fergus county, on the said first day of January, 1911; and the remainder of said indebtedness shall be apportioned between the respective counties, in proportion to the amount of taxable property in Fergus county, and the taxable property in Musselshell county, and heretofore within the boundaries of Fergus county; said amount of taxable property to be ascertained, and said apportionment and valuation of county property to be made by a commission consisting of the board of county commissioners of Fergus county and Musselshell county, and the judge of the tenth judicial district of the state of Montana, which said commission shall meet at the courthouse in the city of Lewistown on the second Tuesday of March, 1911, and shall take as a standard for said apportionment of said indebtedness the assessment for the year 1910, as determined by the board of equalization of said Fergus county.

Apportionment of Indebtedness of Meagher County—Ascertainment of Amount of Taxable Property.

(Section 5.) That all the indebtedness of Meagher county, as the same shall exist on the first day of January, 1911, shall be apportioned between the county of Meagher and the county of Musselshell by first deducting from said indebtedness the amount of all moneys on hand, and the amount of all moneys belonging to the said Meagher county, and also deducting the value of all real and personal property within or belonging to the said Meagher county on the said first day of January, 1911; and the remainder of said indebtedness shall be apportioned between the respective counties to the amount of taxable property in Meagher county, and the taxable property in Musselshell county, and heretofore within the boundaries of said Meagher county; said amount of taxable property to be ascertained, and said apportionment and valuation of county property to be made by a commission consisting of the board of county commissioners of Meagher county and Musselshell county, and the judge of the tenth judicial district of the state of Montana, which said commission shall meet at the courthouse in the town of White Sulphur Springs on the third Monday of March, 1911, and shall take as a standard for said apportionment of indebtedness the assessment for the year 1910, as determined by the board of equalization of the said Meagher county.

Apportionment of Indebtedness of Yellowstone County—Ascertainment of the Amount of Taxable Property.

(Section 6.) That all the indebtedness of Yellowstone county as the same shall exist on the first day of January, 1911, shall be apportioned between the county of Yellowstone and the county of Musselshell by first deducting from said indebtedness the amount of all moneys on hand and the amount of all moneys belonging to the said Yellowstone county, and also deducting the value of all real and personal property within or belonging to the said Yellowstone county on the said first day of January, 1911, and the remainder of said indebtedness shall be apportioned between the respective counties in proportion to the amount of taxable property in Yellowstone county and the taxable property in Musselshell county, said amount of taxable property to be ascertained, and said apportionment and valuation of county property to be made by a commission consisting of the boards of county commissioners of Yellowstone county and Musselshell county and the judge of the thirteenth judicial district of the state of Montana, which said commission shall meet at the courthouse in the city of Billings on the fourth Monday of March, 1911, and shall take as a standard for said apportionment of indebtedness the assessment for the year 1910 as determined by the board of equalization of said Yellowstone county.

Duties of the Treasurers of the Three Counties.

(Section 7.) That the respective county treasurers of Fergus, Meagher and Yellowstone counties shall at the time of the respective adjustments as provided for in sections 4, 5 and 6 of this act, make out and transmit to the county commissioners of Musselshell county, a list of all delinquent taxes and amounts of uncollected taxes within the limits of Musselshell county, as above defined, provided that no delinquent taxes due the respective counties of Fergus, Meagher and Yellowstone, shall be considered in the adjustment of the debt, as hereinbefore provided; but it shall be the duties of the

respective treasurers of Fergus, Meagher and Yellowstone counties to collect such delinquent taxes as may be due said respective counties, and to turn over within thirty days after making such collections to the treasurer of Musselshell county, a pro rata share of such taxes as they may be able to collect.

It is further provided that should there be a surplus of funds in the hands of the county treasurers of Fergus, Meagher and Yellowstone counties, after the adjustment hereinbefore provided, such surplus shall be divided in the same manner and proportion as the indebtedness.

Warrants after Adjustment of Indebtedness.

(Section 8.) That upon the adjustments of said indebtedness it shall be the duty of the county commissioners of Musselshell county to cause to be made out, issued and delivered to the county commissioners of Fergus, Meagher and Yellowstone counties, warrants for any amounts found due these respective counties, which warrants, upon presentation, shall be indorsed by the treasurer of Musselshell county, "Not paid for want of funds," and shall thereafter draw interest as other county warrants.

Bonds by Musselshell County to Pay Indebtedness.

(Section 9.) The county commissioners of the county of Musselshell, for the purpose of paying any indebtedness which may be incurred by reason of assuming any of the indebtedness of Fergus, Meagher and Yellowstone counties, are hereby authorized and empowered to cause to be issued, and to sell at not less than par, the bonds of said Musselshell county, in an amount equal to said indebtedness so incurred, in the manner provided for by law for the issuance and sale of county bonds.

Moneys Due School Districts.

(Section 10.) It is hereby made the duty of the respective county treasurers of Fergus, Meagher and Yellowstone counties, to transfer and pay over, on or before the first day of September, 1911, all moneys in said Fergus, Meagher and Yellowstone counties, to the credit of school districts embraced within the limits of said county of Musselshell, as may have been hereby taken from said counties of Fergus, Meagher and Yellowstone, which said moneys so transferred shall be held by the treasurer of said Musselshell county, to the credit and for the use of the same school districts as they formerly existed.

Transcribing and Indexing Records.

(Section 11.) That the county commissioners of the said Musselshell county are hereby empowered, and it shall be their duty, to contract with the lowest responsible bidder, for transcribing and indexing all records of property lying and being within the limits of the county of Musselshell, and all other public records, which transcripts, when compiled, shall be compared with the original records by the respective clerks of the respective counties of Fergus, Meagher and Yellowstone counties, and when correct shall be by them so certified under their official seals, and thereafter the records so transcribed and certified to, shall be received and admitted in evidence in all courts of law in the state, and be in all respects entitled to like faith and credit as said original records.

The respective county clerks of the respective counties of Fergus, Meagher and Yellowstone, shall receive for their services in comparing and

certifying to the correctness of the copies of the said records, five (5) dollars per day while engaged in said labor, which amount shall be paid by the county of Musselshell on the completion of said labor.

Officers Appointed by This Act.

(Section 12.) The following named persons are hereby appointed to fill the office set opposite their names:

M. M. Klein.....	County commissioner.
W. C. Jenizen.....	County commissioner.
L. C. Neace.....	County commissioner.
A. A. Morris.....	County treasurer.
K. E. Parks.....	County assessor.
W. G. Jarrett.....	Clerk of the district court.
F. W. Dralle.....	Clerk and recorder.
Desmond O'Neil.....	County attorney.
Maude Griffin.....	County superintendent of schools.
J. L. Fisco.....	County sheriff.
E. K. Parkinson.....	County surveyor.
O. R. McVey.....	Public administrator.
W. H. Brissenden.....	County coroner.

All of the said officers shall have the same powers and perform the same duties and be entitled to the same privileges as are by law conferred upon like officers in other counties, and shall hold their respective offices until next general election, or until their successors are duly elected and qualified.

Said officers, however, before entering upon their duties shall severally give bonds, and take the oath, as required of the county officers of other counties of this state, and said bonds shall be filed, as by law required, and approved by the state auditor.

Annual Compensation of County Officers.

(Section 13.) That the officers appointed and mentioned herein in section 12 of this act shall each be allowed to receive as annual compensation for their services as such officers as follows, to wit:

County commissioners.....	As provided by law.
Treasurer.....	Two thousand dollars.
Assessor.....	Fifteen hundred dollars.
Clerk of the district court.....	Eighteen hundred dollars.
Clerk and recorder.....	Two thousand dollars.
County attorney.....	Fifteen hundred dollars.
County superintendent of schools.....	Twelve hundred dollars.
Sheriff.....	Twenty-two hundred and fifty dollars.
Surveyor.....	As provided by law.
Public administrator.....	As provided by law.
County coroner.....	As provided by law.

The said officers shall enter upon their respective duties, and said salaries shall commence, and shall not be increased until the assessed valuation of said Musselshell county is more than eight million dollars, when said salaries shall be paid for said respective officers as provided in section 3116 of the Revised Codes of 1907 of the state of Montana.

Townships and Road Districts—Justices of the Peace and Constables.

(Section 14.) That, at their first meeting, the said commissioners of Musselshell county are empowered to subdivide said county into municipal

townships and establish road districts, and they are hereby authorized to appoint two justices of the peace and two constables for each municipal township, and road supervisors for each road district when required, as provided by the Revised Codes of 1907 of Montana, who shall hold their respective offices until their successors are elected and qualified. All township and precinct officers, road supervisors, officers of school districts, and all other officers within and for the county of Musselshell, whose election or appointments are not provided for, shall or may continue to hold office and exercise the duties pertaining thereto, until the expiration of the term for which said officers were elected or appointed.

Courthouse—When may be Built.

(Section 15.) No courthouse shall be constructed by the said county of Musselshell until the county seat is, as hereinbefore provided, determined.

Boundaries of Meagher County.

(Section 15a.) The boundaries of the county of Meagher are hereby created and established as follows:

Beginning at the northwest corner of section 6, township 13 north of range 2 east; thence west six (6) miles, more or less, to the top of the main divide of the Big Belt Mountains; thence on a line following a general southeasterly direction on the crest of the range to the point where said main divide intersects the present north boundary of Gallatin county; thence east along said boundary to the point of its intersection with the line between ranges 11 and 12 east; thence north to the southeast corner of section 36, township 7 north of range 11 east; thence east to the southeast corner of section 36, township 7 north of range 18 east; thence north on the line between ranges 18 and 19 east to a point determined by projecting a true line eastward from the southeasternmost spur of the Little Belt Mountains at Judith Gap to an intersection with said range line; thence west on a true line to the most southeasterly spur of the Little Belt Mountains at Judith Gap; thence along the crest of said Little Belt Mountains in a general northeasterly direction to a point at which a line projected east from the southwest corner of section 31, township 16 north of range 5 east, will intersect the crest of said Little Belt Mountains; thence west to the southwest corner of section 31, township 16 north of range 5 east; thence south to the point which, when determined by survey, will be the southeast corner of section 36, township 15 north of range 4 east; thence west to the northwest corner of section 6, township 14 north, range 3 east; thence south to the northeast corner of section 1 township 14 north of range 2 east; thence west to the northwest corner of section 6, township 14 north of range 2 east; thence south to the northwest corner of section 6, township 13 north, range 2 east and place of beginning.

Boundaries of Yellowstone and Fergus Counties.

(Section 17.) The boundaries of Fergus and Yellowstone counties are hereby altered so as to conform to the boundaries of Musselshell county, and the boundaries of Meagher county, as established by this act.

Repealing Clause.

(Section 18.) All acts and parts of acts, so far as the same are in conflict with the provisions of this act, are hereby repealed.

(Section 19.) This act shall take effect from and after March 1, 1911.
[Approved February 11, 1911; Laws 1911, c. 25, p. 29.]

§ 2851. Removal of County Seat.

Whenever the inhabitants of any county of the state desire to remove the county seat of the county from the place where it is fixed by law or otherwise to another place, they may present a petition to the board of county commissioners of their county, praying such removal, such place to be named in the petition and that an election be held to determine whether or not such removal must be made. The city or town named in said petition as the place to which the county seat is to be removed, must, at the time of the presentation of the said petition, have been an incorporated city or town for at least one year. [Amendment approved March 3, 1915: Laws 1915, p. 90.]

Meaning of term "town." See note post, § 3202.

Unincorporated town as an entity. See note post, § 3202.

Editorial Notes.

Town as a candidate for county seat. Ann. Cas. 1914D, 227.

§ 2852.

Mandamus to compel submission of question to vote. See note post, § 7214.

The petition is sufficient if it is signed by a majority of the ad valorem taxpayers of the county, if all the persons necessary to make up such majority are qualified electors; it is not necessary that the petition contain the names of a majority of the taxpayers of the county. *State v. Board of Commissioners*, 42 Mont. 62, 78, 111 Pac. 144.

The official duty devolving upon the commissioners under this section is presumed to have been regularly performed; it is presumed that the board compared the names signed to the petition with the poll-books of the "last election." *State v. Board of Commissioners*, 42 Mont. 62, 77, 111 Pac. 144.

§ 2856.

Meaning of term "town." See note post, § 3202.

Unincorporated town as an entity. See note post, § 3202.

§ 2870.

Authority to let public printing contract. See note post, § 2897.

A county comes within the rules and principles applicable to municipal corporations. *Morse v. Granite County*, 44 Mont. 78, 88, 119 Pac. 286.

Under the doctrine of the maxim, "Expressio unius est exclusio alterius," a county does not have any powers other than those specified in this section. *Hersey v. Neilson*, 47 Mont. 132, 145, Ann. Cas. 1914C, 963, 131 Pac. 30.

If the authority of a board of county commissioners to let a public printing contract is questioned, it must justify its action by reference to the provisions of law defining and limiting its powers in this respect. *Hersey v. Neilson*, 47 Mont. 132, 145, Ann. Cas. 1914C, 963, 131 Pac. 30.

Editorial Notes.

County as a municipal corporation. Ann. Cas. 1914C, 968.

§ 2873.

A county is not answerable for personal injuries arising from defective highways; it is a political subdivision of the state, and the state has not consented that the county may be sued on such a cause of action. *Smith v. Zimmer*, 45 Mont. 282, 304, 125 Pac. 420.

COUNTY COMMISSIONERS.

§ 2883. County Commissioners—Vacancy in Office—Term of Appointee.

Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the district judge or judges in whose district the vacancy occurs must fill the vacancy by appointing some qualified elector of the county in which the vacancy occurs, and such appointee shall hold office until the first Monday in January next after a general election, and until his successor is elected and qualified.

And any county office that is filled by appointment, the appointee shall hold office until the first Monday in January next after a general election, and until his successor is elected and qualified. [Amendment approved January 31, 1913, Laws 1913, p. 4.]

A judge of the district court has power, under the Constitution and by virtue of this section, as amended in 1913, to fill a vacancy in the board of county commis-

sioners; but, in doing so, the act, though done by a judicial officer, is executive or ministerial in character, and, under section 7203, cannot be reviewed by certiorari, which is limited to reviewing acts of a judicial nature. *State (ex rel. Downen) v. District Court*, 50 Mont. 249, 146 Pac. 467.

That portion of this section, authorizing an appointment for the unexpired term of a county commissioner is invalid, if such unexpired term extends beyond the first Monday in January next succeeding a general election. *State v. Sedgwick*, 46 Mont. 187, 193, 127 Pac. 94.

The statute was intended to supplant section 2966 of the Revised Codes, whereby all vacancies in county and township officers except county commissioners were to be filled by appointment made by the county commissioners, the appointees to hold until the vacancies should be filled by election. *State ex rel. Roe v. Kehoe*, 49 Mont. 582, 586 et seq., 144 Pac. 162.

The power to fill a vacancy in the office of county commissioner is conferred by the Constitution upon the district court of the county. (Const., art. XVI, sec. 4,

and the statutory provisions enacted in pursuance of it, to wit, Rev. Codes, sec. 2883, and the act here under consideration.) The power need not be invoked, however, by petition or complaint, and its exercise does not depend upon facts found judicially. The appointing power pronounces no decree and adjudicates no rights. *State ex rel. Downen v. District Court*, 50 Mont. 251, 146 Pac. 249.

§ 2886.

Where a special meeting is called for the purpose, among other things, of doing "all necessary things in connection with the advertising and sale of" proposed bonds, and the board adopts a formal resolution directing the bonds to issue, the debentures are not void because the call did not specifically state that one of the purposes of the meeting was the making of an order directing them to issue; such purpose was included in the general purpose of the meeting. *Morse v. Granite County*, 44 Mont. 78, 94, 119 Pac. 286.

§ 2890.

Liability for defective highways. See notes ante, § 1357, and post, § 2873.

§ 2891. Regular Meetings—Extra Sessions.

The board of county commissioners, except as may otherwise be required of them, may meet at the county seat of their respective counties on the first Monday of each and every month of the year, for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three (3) days at each session, except the December session, at which time they may sit not exceeding eight (8) days. But the board may at any time, by giving at least five (5) days' public notice, hold an extra session of not over three (3) days' duration; provided, that the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third or fourth classes. [Amendment approved March 16, 1915; Laws 1915, p. 422.]

§ 2894.

Procedure to establish highways. See ante, §§ 1390-1410.

Power of county commissioners as to care of the poor. See ante, §§ 2054-2057.

Finding of amount necessary for erection of courthouse includes incidentals. See post, § 2934.

Power of district judge to appoint attendants. See note post, § 6302.

The eighth subdivision of this section, relative to the manner of purchasing real estate, applies to a bridge; it is real estate. *State v. Board of Commissioners*, 49 Mont. 517, 523, 143 Pac. 984.

Article IV of the Political Code of 1895, referred to in the last subdivision of this section, is included in sections 2933-2938,

post. *Morse v. Granite County*, 44 Mont. 78, 89, 119 Pac. 286.

Under this section, a board of county commissioners is empowered to change the boundaries of a township, or to abolish it altogether, but a due regard for other provisions of the code requires that such authority be exercised with the limitation that there shall always be at least two townships in every county. *State v. Cronin*, 41 Mont. 293, 109 Pac. 144.

The board of county commissioners cannot limit the number of townships in a county to one; if it had power to do so, it could nullify the provisions of section 9589, post. *State v. Cronin*, 41 Mont. 293, 109 Pac. 144.

A board of county commissioners, the executive body of a county, is one of limited powers and must, in every instance,

justify its action by reference to the provisions of law defining and limiting these powers. *Morse v. Granite County*, 44 Mont. 78, 79, 119 Pac. 286.

A contract made by a board of county commissioners, a few weeks before the expiration of its term of office, for county

printing for the two succeeding years, is valid in the absence of fraud or bad faith. *Picket Pub. Co. v. County Commissioners*, 36 Mont. 188, 122 Am. St. Rep. 352, 12 Ann. Cas. 986, 13 L. R. A. (N. S.) 1115, 92 Pac. 524.

§ 2894a. Validation of Sales Made Under Subdivision 10 of Section 2894.

That all sales heretofore made of real property owned in fee simple by any county in this state, by the board of county commissioners of any county, the validity of which may be in doubt or involved by reason of the failure of the board of county commissioners to comply with the provisions of subdivision 10 of section 2894 of the Revised Codes of the state of Montana, are hereby legalized and declared to be valid and binding sales, and all deeds or conveyances heretofore executed by any board of county commissioners or by its chairman duly authorized by said board, for and on behalf of any county, transferring and conveying any such real property so sold, are hereby legalized and declared to be valid, and vesting the title of the property so conveyed in the purchaser named in such conveyance, in fee simple. [Approved March 15, 1913; Laws 1913, c. 103, p. 440.]

§ 2894b. Validation of Warrants and Bonds for Construction of Highways and Bridges.

All warrants which have been issued by any county of the state, under authority of the board of county commissioners of the county, for the purpose of paying for the construction of public highways and public highway bridges, and not in excess of the constitutional limit of indebtedness, are hereby legalized and declared to be valid and binding obligations of the respective counties issuing the same; and all bonds issued or sold by the board of county commissioners of the county, pursuant to an election held for the purpose of authorizing an issue of bonds for the purpose of constructing public highways and public highway bridges, and not in excess of the constitutional limit of indebtedness, are hereby legalized and declared to be valid. [Approved March 4, 1911; Laws 1911, c. 95, p. 164.]

§ 2897.

A county is a body corporate. See ante, § 2870.

A school district is a body corporate. See ante, § 848.

The requirement of this section, that counties must have their public printing done within the state, is not unconstitutional; it is not a local nor a special law; neither is there any deprivation of property without due process of law nor a regulation of interstate commerce. Her-

sey v. Neilson, 47 Mont. 132, 146, Ann. Cas. 1914C, 963, 131 Pac. 30.

Where a contract for county printing has expired or is about to expire, the commissioners, acting in good faith, may make another contract, a few weeks before the expiration of their term of office, for two succeeding years. *Picket Pub. Co. v. County Commissioners*, 36 Mont. 188, 122 Am. St. Rep. 352, 12 Ann. Cas. 986, 13 L. R. A. (N. S.) 1115, 92 Pac. 524.

Editorial Notes.

County as a municipal corporation. Ann. Cas. 1914C, 968.

COUNTY FINANCES.

§ 2905. Refunding Bonds.

The board of county commissioners of any county is hereby vested with the power and authority to issue and negotiate on the credit of the county, coupon bonds to an amount sufficient to enable the county to redeem all legal outstanding bonds, warrants or orders; or for the purchase of necessary public building sites, and for the construction of necessary public build-

ings, public highways and bridges, and for the ordinary and necessary expenses of the county authorized by the general laws of this state, and also for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county, or the change of any county boundary lines, not exceeding in the aggregate, including outstanding bonded indebtedness, five (5%) of the value of the taxable property within such county to be ascertained by the last assessment for state and county taxes previous to issuing such bonds. Such bonds are redeemable and payable at such time not longer than twenty (20) years after the date thereof, as the board determines, and the interest which such bonds bear must be fixed by the board not exceeding six (6%) per cent per annum, and be represented by interest coupons payable semi-annually on the first days of January and July of each year. [Amendment approved February 26, 1915; Laws 1915, p. 47.]

Finding of amount necessary for erection of courthouse includes incidentals. See post, § 2934.

This section authorizes the county commissioners to issue bonds for the purchase of necessary building sites, and for the construction of necessary public buildings; and the interest, not exceeding six per cent, must be made payable on the first days of January and July of each year. *Morse v. Granite County*, 44 Mont. 78, 92, 119 Pac. 286.

§ 2906.

Form of bond need not be adopted prior to advertisement. See note post, § 2907.

When the board of county commissioners issues any bonds, it is the duty of the board to sell the same and give notice by advertisement of the time of sale, but there is nothing in the law which requires the form of bonds to be adopted prior to the advertisement; it is not necessary to give the form of the bonds in the advertisement, or even a description thereof. *Reid v. Lincoln County*, 46 Mont. 31, 61, 125 Pac. 429.

§ 2907. Notice of Sale to be Published.

When the board issues any bonds authorized by this article it is its duty to sell the same and give notice by advertisement in some newspaper published in the county, or if there be no newspaper published in the county then in any newspaper published in an adjoining county for a period of not less than thirty (30) days prior to the time said bonds are to be sold; such advertisement must be for sealed proposals, which must state the amount of such bonds offered for sale and the person offering the highest price therefor in conformity with the requirements of the notice of sale is entitled to receive the amount of such bonds which he offers to buy; but no bonds must be sold for any price less than the par value thereof; provided however, that the board may effect an exchange of such county bonds to take up its legal outstanding indebtedness or issue same to meet its obligation to another county incident to the creation of a new county, change of county boundary, or on county division, without publishing the notice herein provided for. [Amendment approved February 26, 1915; Laws 1915, p. 48.]

§ 2908. Disposition of Proceeds of Sale of Bonds.

The proceeds derived from the sale of bonds authorized to be issued by this article must be paid into the county treasury and must be applied to the payment of the legal bonds, warrants or orders of the county which may be outstanding or unpaid in the order in which said bonds, warrants or orders become due, or applied in liquidation of its indebtedness incident to the creation of a new county, county division, or change of county boundary lines. But the board may at any lawful meeting provide by resolution for the exchange of any bonds issued under the provisions of this

article to take up any outstanding county bonds then due and subject to payment and in order to redeem and pay any legal county warrants or orders of the county issued prior to a day to be fixed by the board and entered of record in the minutes of its proceedings. In the making of such exchange by the issuance and delivery of bonds to take up any such legal outstanding indebtedness of the county the board is vested with judgment and discretion to issue such bonds in such manner as may appear to the advantage and benefit of the county and is hereby authorized to issue and deliver same in such manner and upon such terms as are deemed for the best interest and advantage of the county. The exchange when made must be made dollar for dollar with accrued interest thereon. And the board may advertise the privilege to so exchange bonds then due and warrants and orders of the county issued prior to the day so fixed in some newspaper printed and published in the county or if there be no newspaper published in the county then in a newspaper published in an adjoining county for such period as the board may designate, in the event that the board shall determine it to be to the best interest and advantage of the county to delay proceedings respecting the proposed liquidation of outstanding indebtedness until such publication has been made. The board is also authorized upon the same conditions and restrictions herein prescribed to issue such bonds against the county in order to liquidate any indebtedness which may be occasioned because of the creation of a new county, county division or change of county boundary lines. [Amendment approved February 26, 1915; Laws 1915, p. 49.]

§ 2911.

Interest on bonds. See note ante,
§ 2905.

§ 2912.

Interest on bonds. See note ante,
§ 2905.

COUNTY FAIRS.**§ 2928. Appropriations for County Fair—Date of Fair.**

The board of county commissioners of their respective counties may appropriate out of the general fund of the county treasury, to any county fair association, agricultural or horticultural society, holding an annual fair each year in such county, in the sum not to exceed two thousand five hundred (\$2,500) dollars for any one year. Such county fairs, if held, must be held between the first day of July and the first day of November, provided, however, that any moneys so appropriated shall not be expended for horse-racing, contests of speed of any kind, or for any shows or amusements whatsoever. [Amendment approved February 16, 1911; Laws 1911, p. 49.]

§ 2931a. Acquisition of County Fair Grounds.

(Section 1.) The board of county commissioners of any county in the state of Montana, may purchase, receive by donation, and own or hold, a tract of land in their respective county not exceeding one hundred and sixty (160) acres, as county fair grounds, which land may be used by any county fair association, agricultural or horticultural exhibition for the purpose of promoting the interest of agriculture, horticulture and stock-raising.

(Section 2.) The board of county commissioners who shall avail themselves of the provisions of the foregoing section, may purchase, erect, construct and maintain permanent improvements on such county fair grounds. [Approved February 16, 1911; Laws 1911, c. 30, p. 49.]

On appeal from an order refusing an injunction pendente lite, a transcript must be filed as a copy of the record upon which

the order was based. *Latimer v. Nelson*, 47 Mont. 545, 133 Pac. 680.

§ 2932a. Tax Levy for County Fairs.

The board of county commissioners in any county in Montana shall have the power to levy an ad valorem tax of one mill or less, on each dollar of taxable property in such county for the purpose of securing, equipping and maintaining a county fair, including the purchase of land for such purpose. The funds derived from such tax shall be kept in a separate fund by the county treasurer, and shall be paid out in the regular way for the purposes specified in section 1 of this act. [Approved March 18, 1913; Laws 1913, c. 124, p. 473.]

§ 2933.

Sections 2933-2938, include article IV, of Political Code of 1895. *Morse v. Granite County*, 44 Mont. 78, 89, 119 Pac. 286.

Different sections of the code, enacted at the same time, each dealing with a different particular of the mode prescribed for the negotiation of loans by counties, must be so construed, if possible, as to render them harmonious with each other. *Morse v. Granite County*, 44 Mont. 78, 96, 119 Pac. 286.

In view of article XIII, section 5, of the Constitution, and of this section and of section 2937, post, the approval of a majority of the electors voting at an election to determine whether a proposed indebtedness shall be incurred, is sufficient to legalize a bond issue. *Morse v. Granite County*, 44 Mont. 78, 96, 119 Pac. 286.

§ 2934.

Power to issue bonds, and interest. See note ante, § 2905.

Where the commissioners have determined the amount necessary for the general purpose of a proposed bond issue, such as the erection of a courthouse, it is not required of them, before submitting the question to a vote, to ascertain the cost of a suitable site for the building, nor that of the necessary furnishings; these are matters incident to and necessarily included in the principal purpose. *Morse v. Granite County*, 44 Mont. 78, 91, 119 Pac. 286.

§ 2935.

Effect of holding election under constitutional law. See note ante, § 491.

A "ferry" is a mere incident or movable portion of a highway that crosses a stream. *Reid v. Lincoln County*, 46 Mont. 31, 58, 125 Pac. 429.

A constitutional restriction that a board of county commissioners shall not incur

any indebtedness or liability, above a designated amount, for a single purpose, is a limitation upon the authority of the board; it has no reference to the power of the people. *Reid v. Lincoln County*, 46 Mont. 31, 57, 125 Pac. 429.

If a special election is called to vote upon the question of issuing bonds to create a highway system, including bridges and free ferries, the order for the election and notice thereof are valid, where the general purpose of the election, and the amount of money necessary to accomplish it, is clearly stated; it is not necessary to give details, such as the particular branch roads or ferries to be constructed; the people may rely on the judgment and discretion of the county commissioners as to details of the scheme. *Reid v. Lincoln County*, 46 Mont. 31, 60, 125 Pac. 429.

§ 2937.

Construed with § 2933, ante.

§ 2938.

In a special election to vote upon the question of issuing bonds to create a highway system, the ballot is sufficient where it recites that the issue is the bonding of the county, in a designated amount, to provide funds for a system of highways, bridges and free ferries, such bonds to be redeemable in fifteen years and payable in twenty years, and to bear interest, etc.; the ballot is sufficient where it substantially follows the directions of the statute; it is not necessary to state therein the course, termini or exact location of the proposed highway, or the number or location of the proposed bridges and ferries; the fundamental and initial question to be determined in all cases is whether the people are willing to authorize the commissioners to spend a definite amount of money for a certain public improvement. *Reid v. Lincoln County*, 46 Mont. 31, 59, 125 Pac. 429.

§ 2946a. Payment of Claims by County Commissioners of First Class.

The board of county commissioners in any county of the first class may, in its discretion, allow any claims for services rendered, or labor performed,

for or on behalf of the county by any person at the request of any county officer, whether or not such county officer was empowered, or authorized to secure, obtain or contract for the rendition of any such service rendered or labor performed, where the person holding such claim has presented the same in due time in the manner provided by law, prior to the passage of this act; provided that such claims shall not exceed the sum of two hundred and fifty dollars for any one year. [Approved March 4, 1911; Laws 1911, c. 88, p. 157.]

§ 2947.

Bond on appeal from order granting retail liquor license is not required. See note post, § 7124.

In the case of claims against counties, the claimant, or the objecting taxpayer, and the county are the real parties in interest, and therefore adversary parties.

State v. District Court, 48 Mont. 477, 480, 138 Pac. 1100.

Editorial Notes.

Counties, claims against, effect of allowance or rejection of. 55 Am. St. Rep. 203.

Estoppel to contest illegal claims or expenditures. 137 Am. St. Rep. 354.

§ 2957. County Officers Enumerated.

The officers of a county are:

A treasurer.

A county clerk.

A clerk of the district court.

A sheriff.

A county auditor; except in the sixth, seventh and eighth class counties.

A county attorney.

A surveyor.

A coroner.

A public administrator.

An assessor.

A county superintendent of common schools.

A board of county commissioners.

[Amendment approved March 17, 1913; Laws 1913, p. 454.]

§ 2966.

Filling vacancies in county offices. See note ante, § 455.

§ 2973. Classification of Counties.

For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds. The several counties of this state shall be classified according to the assessed valuation thereof, as follows:

First Class. All counties having an assessed valuation of thirty-five million of dollars or over.

Second Class. All counties having an assessed valuation of more than twenty and less than thirty-five million of dollars.

Third Class. All counties having an assessed valuation of more than fifteen and less than twenty million of dollars.

Fourth Class. All counties having an assessed valuation of more than eleven and less than fifteen million of dollars.

Fifth Class. All counties having an assessed valuation of more than eight and less than eleven million of dollars.

Sixth Class. All counties having an assessed valuation of more than five and less than eight million of dollars.

Seventh Class. All counties having an assessed valuation of more than three and less than five million of dollars.

Eighth Class. All counties having an assessed valuation of less than three million of dollars. [Amendment approved March 5, 1915; Laws 1915, p. 97.]

§ 2976.

Action on a county treasurer's bond. See note post, § 6445.

cludes jurors' certificates, and the restriction as to the power of payment by the treasurer applies as well to them as to other claims against the county. County of Silver Bow v. Davies, 40 Mont. 418, 426, 107 Pac. 81.

§ 2986.

Action on county treasurer's bond. See note post, § 6445.

This section is mandatory, both as to the duty of the clerk and of the treasurer. In re Farrell, 36 Mont. 261, 92 Pac. 785.

"Or as otherwise provided by law," in the fifth subdivision of this section, in-

§ 3003. Deposit of Public Funds by County Treasurer.

It shall be the duty of the county treasurer to deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in his county subject to national supervision or state examination, as the board of county commissioners shall designate and no other, and the sums so deposited shall bear interest at the rate of two and one-half (2½) per centum per annum payable quarterly annually. The treasurer shall take from such banks such security in public bonds or other securities, or indemnity bonds, as the board of county commissioners of such county may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits on demand.

When more than one such bank be available in any county such deposits shall be distributed ratably among all such banks qualifying therefor, substantially in proportion to the paid in capital of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of the county treasurer to prorate all such deposits among all the banks in his county qualified to receive same as in this act provided, to the end that an equitable distribution of such deposits be maintained. If no such bank exists in the county, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys or any portion thereof shall be deposited under the terms of this act in the bank or banks most convenient to such county willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits shall, through its president and cashier make a statement quarter annually of account under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balances in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank, nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain, in any bank until the security for such deposits shall have been

first approved by the board of county commissioners and delivered to the treasurer. All interest paid and collected on such deposits shall be credited to the general fund of the county. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct. [Amendment approved March 14, 1913; Laws 1913, p. 389.]

If a county treasurer keeps county money on general deposit with a bank, the fact that a part of it is properly secured does not affect the status of county money kept on deposit in this bank, without security and in violation of law. *Yellowstone County v. First Trust & Sav. Bank*, 46 Mont. 439, 449, 128 Pac. 596.

The illegal act of a county treasurer, in permitting county funds to remain on general deposit with a bank, without the security required by law, cannot be ratified by the county; because the only way in which it can speak is through the legislature. *Yellowstone County v. First Trust & Sav. Bank*, 46 Mont. 439, 449, 128 Pac. 596.

Under this section, when county moneys are on general deposit in a bank, a bond in double the amount must be given to secure the county; and, when a bond is so given, the money so secured becomes the funds of the bank, to be commingled with its other funds and assets, and the county becomes a general creditor of the bank, with the status of such creditor. *Yellowstone County v. First Trust & Sav. Bank*, 46 Mont. 439, 449, 128 Pac. 596.

The clause in this section, requiring double indemnity from a bank in which a county treasurer purposes to make a general deposit of county funds, applies not only to bonds furnished by individuals but to foreign surety bonds as well; in either case, the bond is required to be in double the amount of the county funds deposited. *Yellowstone County v. First Trust & Sav. Bank*, 46 Mont. 439, 448, 128 Pac. 596.

If a county treasurer keeps county moneys on general deposit in a bank, a

part of which is secured by a bond in double the amount, his act in leaving the remainder there without the security required by law is denounced by section 8592, post, as a felony. *Yellowstone County v. First Trust & Sav. Bank*, 46 Mont. 439, 449, 128 Pac. 596.

If a bond is given to secure county funds already on deposit with a bank, there is, in legal effect, a redeposit of the amount thus secured, and neither the validity nor the sufficiency of the bond is impaired by the wrongful act of the county treasurer in keeping on deposit, with that bank, county moneys in excess of that sum. *Yellowstone County v. First Trust & Sav. Bank*, 46 Mont. 439, 449, 128 Pac. 596.

If a county treasurer keeps county money on general deposit with a bank, a part of which is properly secured, the treasurer and the officers of the bank are chargeable with the money not secured; and, as to such money, the bank is a trustee ex maleficio for the use and benefit of the county. *Yellowstone County v. First Trust & Sav. Bank*, 46 Mont. 439, 450, 128 Pac. 596.

If a treasurer deposits county moneys in a bank without exacting the required security, it is no defense to a suit by the county to have the bank declared a trustee ex maleficio of such moneys for its benefit, and to be decreed entitled to preference in the distribution of the assets of the bank, then in the hands of a receiver, that the treasurer was following a custom established by his predecessor. *Yellowstone County v. First Trust & Sav. Bank*, 46 Mont. 439, 451, 128 Pac. 596.

§ 3008a. County Treasurers to Accept Money from Mortgagors for Payment of Taxes or Redemption from Tax Sale.

Be it enacted by the Legislative Assembly of the State of Montana:

That whenever any person or corporation shall desire to redeem from a tax sale, or to pay any tax upon any lot, piece or parcel of real estate which said person or corporation shall own or hold a mortgage or other lien against it shall be the duty of the county treasurer of the county in which such real estate is situated, to permit such redemption or payment; and in case the said real estate shall have been assessed or sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of the said county treasurer to compute and apportion the tax that should have properly been

assessed against the said real estate sought to be redeemed, or upon which the taxes are sought to be paid, if the same had been separately assessed, any personal tax which is a lien upon said real estate shall be likewise computed and apportioned, and upon the payment of the amount so ascertained by said computation and apportionment, to the said county treasurer, such real estate shall be discharged from the lien of all taxes levied and assessed against the same for the year in which the payment or redemption was made. [Approved March 6, 1915; Laws 1915, c. 91, p. 146.]

§ 3010.

Power of district judge to appoint attendants. See note post, § 6302.

§ 3026.

Power of district judge to appoint attendants. See note post, § 6302.

Editorial Notes.

Diligence required in serving execution and other process and their liability resulting from losses for want of such diligence. 95 Am. Dec. 423.

§ 3030.

Accusation for removal of sheriff from office, sufficiency of. See note post, § 9006.

§ 3047a. Registration of Ranch Owners.

The owner of any farm or ranch in the state of Montana may, upon the payment of one (\$1) dollar to the county clerk and recorder in the county in which the farm or ranch may be situated, have the name of such farm or ranch entered and recorded in a register, which the county clerk and recorder shall keep for such purpose, and thereupon such owner shall be, by said clerk and recorder, furnished a certificate issued under the seal of said official, setting forth therein the name and location of the farm or ranch and the name of such owner, provided, that when any name shall have been recorded as hereinbefore provided, any other person or persons shall not have the right to use the same name for any other farm or ranch in the same county except by prefixing or adding thereto designating or other identifying words. [Approved March 3, 1913; Laws 1913, c. 49, p. 82.]

§ 3052.

Sufficiency of prosecution in name of state. See note post, § 9148.

Violation of city ordinance is not a "public offense." See note post, § 9677.

Editorial Notes.

Discretion of prosecuting attorney with respect to instituting and conducting criminal prosecution. Ann. Cas. 1912B, 755.

§ 3072a. Stenographers for Coroners in Counties of First Class.

In each county of the first class, the coroner may, with consent of the county commissioners, appoint a stenographer who shall hold such position during the pleasure of the coroner making the appointment, and who shall receive as salary the sum of one hundred dollars (\$100) per month, to be paid monthly out of the contingent fund of the county upon the order of the board of county commissioners. [Approved February 6, 1911; Laws 1911, c. 8, p. 12.]

§ 3072b. Inquest in Case of Prisoners in State Prison.

(Section 1.) When a prisoner confined in the state prison shall die, the coroner of the county wherein the state prison is located, may hold an inquest as provided in "sections 9663 to 9675, inclusive, of the Revised Codes of Montana of 1907."

(Section 2.) Whenever an inquest is held under the provisions of this act the county clerk of the county where such inquest is had, shall make

out a statement of all the costs incurred by the county in such inquest properly certified by the coroner of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison, to the county treasurer of the county where such inquest was had. [Approved March 8, 1909; Laws 1909, c. 122, p. 174.]

§ 3074.

Where a public administrator had twice been elected, the sureties on his second official bond were not liable for his acts or omissions before they became bondsmen. *O'Rourke v. Harper*, 35 Mont. 346, 89 Pac. 65.

A public administrator must procure letters of administration like any other applicant; he is not ex-officio administrator of any estate. *O'Rourke v. Harper*, 35 Mont. 346, 89 Pac. 65.

§ 3092a. Public Administrator—Statements Concerning Property of Decedent.

(Section 1.) Whenever any person dies in any county of this state, and no administrator has been appointed to take charge of his estate, the public administrator of such county, prior to the issuance of letters of administration to him, shall have authority to make a written demand upon any person, firm, bank or corporation, which he believes holds or has in their possession or control any money, evidence of indebtedness, or other personal property, or which owes to such deceased person any money, to furnish to him a written statement, under oath, showing the amount of money, or the evidence of indebtedness, or personal property of such deceased person held by them, fully describing the same, and the total sums of money, if any, due from them to such deceased person. Upon receipt of such written demand the person, firm, bank or corporation receiving the same shall immediately furnish, under oath, to such public administrator said statement. [Approved March 10, 1909; Laws 1909, c. 134, p. 199.]

§ 3092b. Refusal to Furnish Statement a Misdemeanor.

(Section 2.) Any person, firm, bank or corporation, or officer, agent or employee thereof refusing upon demand, to furnish the statement, as required by section 1 of this act, shall be guilty of a misdemeanor. [Approved March 10, 1909; Laws 1909, c. 134, p. 199.]

§ 3092c. Estates of Less Than Two Hundred Dollars.

(Section 3.) If the statement or statements furnished the public administrator in accordance with the provisions of section 1, of this act show that the aggregate market value of the estate of such deceased person is less than two hundred (\$200) dollars, then upon demand of the public administrator the person, firm, bank or corporation holding, controlling or owning the same, or any part thereof, shall turn over, indorse or surrender the same to such public administrator at once, without the issuance of letters of administration to him. The public administrator shall, upon receipt of the money, evidence of indebtedness or other personal property, issue a receipt to the person, firm, bank or corporation delivering the same to him, fully describing the property received. Such receipt, signed by the public administrator, shall fully discharge the person, firm, bank or corporation receiving the same from all further liability to the estate of said deceased

person, to the amount of money or for the property set out in said receipt. [Approved March 10, 1909; Laws 1909, c. 134, p. 200.]

§ 3092d. Summary Settlement of Such Estate.

(Section 4.) Upon the receipt of money, evidence of indebtedness or other property, as provided in this act, the public administrator shall proceed at once to the settlement of the estate of the decedent, in the same manner and shall have the same power and authority as in estates where letters of administration have been issued to him; provided, that upon ten days notice by posting in three public places in the county, he may sell at public auction the personal property received by him without procuring an order of court authorizing such sale, and that upon the presentation of claims against the estate, duly itemized and verified by the claimant, the public administrator upon approval thereof may pay the same without having the approval of the court. [Approved March 10, 1909; Laws 1909, c. 134, p. 200.]

§ 3092e. Reports of Property Received.

(Section 5.) Upon the settlement of the estate, the public administrator must, within thirty days, make a full report, under oath, showing all money and property received by him, for whom received, and all disbursements made, and the purposes thereof, and file the same in the office of the clerk of the district court of his county. [Approved March 10, 1909; Laws 1909, c. 134, p. 200.]

§ 3092f. Fixing Day for Hearing of Report.

(Section 6.) Upon the filing of such report the clerk of the court must make an order fixing a day for the hearing of the report, giving notice thereof by the posting of notices in three public places in the county for a period of ten days before the date of hearing, at which hearing any and all persons interested therein may appear and object to such report, or to any of the matters contained therein. [Approved March 10, 1909; Laws 1909, c. 134, p. 200.]

§ 3092g. Order upon Hearing of Report.

(Section 7.) Upon such hearing the court may make such orders with reference to such report as may be necessary and proper. [Approved March 10, 1909; Laws 1909, c. 134, p. 201.]

§ 3092h. Compensation of Public Administrator.

(Section 8.) The public administrator shall receive as full compensation for his services, including attorneys' fees, a commission of fifteen percent of the total amount of money received by him in any estate provided for in this act; provided, that in no case shall the compensation be less than five (\$5) dollars. [Approved March 10, 1909; Laws 1909, c. 134, p. 201.]

§ 3112.

The fees of the clerk in probate proceedings, exacted under section 3170, post, must be paid by him to the county treasurer,

and they become a part of the public moneys of the county. *Hauser v. Miller*, 37 Mont. 22, 25, 94 Pac. 197.

§ 3116. Salaries of County Officers Classified.

The county officers are entitled to receive as an annual compensation or salary for services according to the following classification, to wit:

First Class.

Treasurer, three thousand five hundred dollars.
Sheriff, four thousand five hundred dollars.
Assessor, three thousand dollars.
County clerk, three thousand five hundred dollars.
County auditor, two thousand five hundred dollars.
Clerk of the district court, three thousand five hundred dollars.
County attorney, three thousand dollars.
County superintendent of common schools, two thousand dollars.

Second Class.

Treasurer, three thousand dollars.
Sheriff, three thousand five hundred dollars.
Assessor, two thousand five hundred dollars.
County clerk, three thousand dollars.
County auditor, two thousand dollars.
Clerk of the district court, three thousand dollars.
County attorney, two thousand five hundred dollars.
County superintendent of common schools, one thousand five hundred dollars.

Third Class.

Treasurer, three thousand dollars.
Sheriff, three thousand five hundred dollars.
Assessor, two thousand two hundred and fifty dollars.
Auditor, one thousand seven hundred and fifty dollars.
County clerk, two thousand seven hundred and fifty dollars.
Clerk of the district court, two thousand seven hundred and fifty dollars.
County attorney, two thousand five hundred dollars.
County superintendent of common schools, one thousand five hundred dollars.

Fourth Class.

Treasurer, two thousand five hundred dollars.
Sheriff, two thousand seven hundred and fifty dollars.
Assessor, two thousand dollars.
Auditor, one thousand seven hundred and fifty dollars.
County clerk, two thousand five hundred dollars.
Clerk of the district court, two thousand five hundred dollars.
County attorney, two thousand dollars.
Superintendent of common schools, one thousand five hundred dollars.

Fifth Class.

Treasurer, two thousand five hundred dollars.
Sheriff, two thousand seven hundred and fifty dollars.
Assessor, one thousand eight hundred dollars.
Auditor, one thousand seven hundred and fifty dollars.
County clerk, two thousand dollars.
Clerk of the district court, two thousand dollars.
County attorney, two thousand dollars.
Superintendent of common schools, one thousand five hundred dollars.

Sixth Class.

Treasurer, two thousand dollars.
 Sheriff, two thousand two hundred and fifty dollars.
 Assessor, one thousand five hundred dollars.
 County clerk, two thousand dollars.
 Clerk of the district court, one thousand eight hundred dollars.
 County attorney, one thousand five hundred dollars.
 Superintendent of common schools, one thousand five hundred dollars.

Sixth Class.

Treasurer, two thousand dollars.
 Sheriff, two thousand two hundred and fifty dollars.
 Assessor, one thousand five hundred dollars.
 County clerk, two thousand dollars.
 Clerk of the district court, one thousand eight hundred dollars.
 County attorney, one thousand five hundred dollars.
 Superintendent of common schools, one thousand two hundred dollars.

There seems to be a duplication here, with a variance in the case of the superintendent of common schools.

Seventh Class.

Treasurer, one thousand eight hundred dollars.
 Sheriff, two thousand dollars.
 Assessor, one thousand two hundred dollars.
 County clerk, one thousand eight hundred dollars.
 Clerk of the district court, one thousand two hundred dollars.
 County attorney, one thousand two hundred dollars.
 Superintendent of common schools, eight hundred dollars.

Eighth Class.

Treasurer, one thousand five hundred dollars.
 Sheriff, one thousand eight hundred dollars.
 Assessor, one thousand dollars.
 County clerk, one thousand two hundred dollars.
 Clerk of the district court, one thousand two hundred dollars.
 County attorney, one thousand dollars.
 Superintendent of common schools, six hundred dollars.

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

Section 4. This act shall be in full force and effect from and after its passage and approval by the Governor. [Amendment approved March 17, 1913; Laws 1913, p. 454.]

§ 3116a. Salaries of County Superintendents of Schools.

In all counties of the seventh and eighth classes the county superintendent of schools shall be paid salaries of twelve hundred dollars (\$1,200) per annum. [Approved March 5, 1915; Laws 1915, c. 72, p. 98.]

§ 3118. Annual Compensation of Deputies or Assistants.

The annual compensation allowed to any deputy or assistant is as follows:

Counties of the First Class.

Sheriff.

One under-sheriff, twenty-four hundred dollars.
 One chief deputy and clerk, eighteen hundred dollars.
 All other deputies, one thousand, five hundred dollars.

Clerk and Recorder.

One chief deputy, one thousand eight hundred dollars.
All other deputies, one thousand five hundred dollars.

Clerk District Court.

One chief deputy, eighteen hundred dollars.
Each department, deputy clerk, sixteen hundred and fifty dollars.
All other deputies, one thousand five hundred dollars.

Treasurer.

One chief deputy, two thousand dollars.
Other deputies, one thousand, five hundred dollars.

Assessor.

One chief deputy, one thousand eight hundred dollars.
Other deputies between first Monday of March and August of each year, one hundred fifty dollars per month.

County Attorney.

Chief deputy, twenty-four hundred dollars.
Other deputies, one thousand eight hundred dollars.

Auditor.

One chief deputy, one thousand, eight hundred dollars.
Other deputies, one thousand, five hundred dollars.

Counties of the Second Class.

County Attorney.

Chief deputy, one thousand, eight hundred dollars.
Other deputies, one thousand, five hundred dollars.

Counties of the Second and Third Class.

Under-sheriff, eighteen hundred dollars.
Each deputy sheriff, fifteen hundred dollars.
Each deputy clerk, fifteen hundred dollars.
Chief deputy clerk, district court, eighteen hundred dollars.
Other deputy clerks, district court, fifteen hundred dollars.
Chief deputy treasurer, eighteen hundred dollars.
Deputy treasurer, eighteen hundred dollars.
Chief deputy clerk and recorder, eighteen hundred dollars.
Chief deputy assessor, eighteen hundred dollars.
Deputy assessors, fifteen hundred dollars.
Deputy auditor, fifteen hundred dollars.

Counties of the Fourth and Fifth Class.

Under-sheriff, eighteen hundred dollars.
Each deputy sheriff and jailer, fifteen hundred dollars.
Deputy clerks, fifteen hundred dollars.
Deputy clerks, district court, fifteen hundred dollars.
Deputy treasurer and deputy assessor allowed by law at the rate of fifteen hundred dollars.

Counties of the Sixth, Seventh and Eighth Classes.

Under-sheriff, one thousand five hundred dollars.

Each deputy sheriff, not to exceed one thousand five hundred dollars.
Deputy clerks, not to exceed one thousand, five hundred dollars.
Deputy clerk district court, not to exceed, one thousand, two hundred dollars. [Amendment approved March 9, 1911; Laws 1911, p. 374.]

§ 3118a. Compensation of Under-sheriffs in Counties of First Class.

The salary and compensation of under-sheriffs in counties of the first class shall be two thousand four hundred (\$2,400) dollars per annum, payable in monthly installments of two hundred (\$200) dollars per month. [Approved February 18, 1911; Laws 1911, c. 35, p. 65.]

§ 3119. Number of Deputy Sheriffs and County Clerks.

The whole number of deputies allowed the county clerk in counties of the first and second class must not exceed six; in counties of the third class, three; in counties of the fourth and fifth class, two; in counties of the sixth, seventh and eighth class, one. The whole number of deputies allowed the clerk of the district court in counties of the first and second class must not exceed one chief deputy and deputies to the number of six; in counties of the third and fourth class having more than one district judge, four; in counties of the third and fourth class having one district judge, two; in counties of the fifth, sixth, seventh and eighth class, one. The whole number of deputies allowed the sheriff is one under-sheriff, and in addition not to exceed the following number of deputies: In counties of the first and second class, six; in counties of the third and fourth class, two; in counties of the fifth, sixth, seventh and eighth class, one. The sheriff in counties of the first, second and third class may appoint two deputies; in the fourth, fifth, sixth, seventh and eighth class, one deputy, who shall act as jailer at a salary not to exceed ninety dollars (\$90) per month. [Amendment approved March 8, 1909; Laws 1909, p. 167. Prior amendment: Laws 1909, p. 123.]

§ 3119a. County Clerk—Chief Deputy.

The county clerk in counties of the first class may designate one of his deputy clerks as chief deputy clerk who shall receive a salary of eighteen hundred (\$1800) dollars per annum. [Approved March 3, 1909; Laws 1909, c. 53, p. 60.]

§ 3119b. Hours of Work for Jailers.

From and after the first day of April, 1909, eight hours shall constitute a day's work for jailers in counties of the first, second and third classes, except in cases of emergency and when the peace and safety of the community require that such jailers work for a longer period than eight hours in any twenty-four. [Approved March 5, 1909; Laws 1909, c. 93, p. 123.]

Prior to this act, which amends section 3119, Revised Codes, in the one particular, that section provided that in a county of the third class the sheriff could appoint two deputies, who shall act as jailers "at a salary not to exceed ninety dollars per month" for each; the amendment substituted, for the words above quoted, "and receive the same salary as other deputy sheriffs." State ex rel. Hay v. Hindson, 40 Mont. 353, 106 Pac. 362.

Effect of amendment of statutes. See note ante, § 119.

If two acts are passed by the legislature at the same session, both amending the same statute and neither referring to the other, both must be given effect, unless their provisions are irreconcilable; applied to acts amending this section. State v. Hindson, 40 Mont. 353, 358, 106 Pac. 362.

The amendment of 1909 substitutes "four" for "three"; and as so amended the

section allows the clerk of the district court, in a county of the third class having more than one district judge, four deputies. *State v. Hindson*, 40 Mont. 353, 106 Pac. 362.

§ 3123.

The amendment of 1905 to section 4597 of the Political Code, providing among other things that the sheriff in a third-class county "may appoint two deputies . . . who shall act as jailers," does not create a new class of deputies, or lodge in the sheriff, exclusively, the power of appointment without the consent of the county commissioners, but simply increases the maximum number he may appoint, subject

to the approval of the commissioners. *Hogan v. Cascade County*, 36 Mont. 183, 92 Pac. 529.

§ 3128.

See section 3134, post.

§ 3131. [Repealed.]

By act approved March 9, 1911; Laws 1911, c. 132, p. 376.

§ 3132. [Repealed.]

By act approved March 9, 1911; Laws 1911, c. 132, p. 376.

§ 3134. Deputy County Attorneys.

County attorneys of counties of the first and second classes shall have the power and authority to name and appoint the deputies provided for in section 3128 of the Revised Codes of Montana of 1907, and to revoke their said appointments, except that the county attorney of every third class county, may appoint one deputy, whose salary is hereby fixed at fifteen hundred dollars (\$1500) per annum. [Amendment approved March 9, 1911; Laws 1911, p. 376. Prior amendment: Laws 1909, p. 114.]

§ 3134a. Special Counsel to Assist County Attorneys.

The board of county commissioners has the power, except in counties of the first class, whenever in its judgment, the ends of justice or the interests of the county require it, to employ, or authorize the county attorney to employ, special counsel to assist in the prosecution of any criminal case pending in such county, or to represent said county in any civil action in which such county is a party. [Approved March 3, 1909; Laws 1909, c. 61, p. 68.]

§ 3134b. Deputies to County Attorneys in First-class County.

County attorneys in all counties of the first class shall be allowed to appoint the number of five deputies, one of which shall be the chief deputy. The annual compensation allowed to any deputy county attorney, in counties of the first class, is as follows: One chief deputy, twenty-four hundred dollars. All other deputies, eighteen hundred dollars. [Approved February 3, 1915; Laws 1915, c. 8, p. 12.]

§ 3135. [Repealed.]

By act approved March 9, 1911; Laws 1911, c. 132, p. 376.

§ 3137.

A sheriff, constable, or other peace officer, traveling in the discharge of his duties, is entitled to charge only for each mile "actually and necessarily" traveled; and a chief of police is guilty of misconduct in office in claiming and collecting mileage fees for services performed by another officer, he paying to the latter his actual traveling expenses and retaining for himself the balance of the total amount

received. *State v. Examining and Trial Board*, 43 Mont. 389, 399, Ann. Cas. 1912C, 143, 117 Pac. 77.

Editorial Notes.

Exacting illegal fees or compensation, as misconduct, for which public officer may be removed. Ann. Cas. 1912C, 147.

§ 3154.

Duties of clerk as to jurors' certificates. See post, §§ 3179, 3183.

Liability for issuance of spurious certificates. See note ante, § 384.

Implication of issuance according to law.
See note post, § 6566.

This section does not require the certificate to be addressed to the treasurer; his duty in the premises requires him to pay upon its presentation. *County of Silver Bow v. Davies*, 40 Mont. 418, 425, 107 Pac. 81.

The rule applicable to jurors' certificates applies also to witnesses' certificates; the clerk must observe the same formalities in issuing them. *County of Silver Bow v. Davies*, 40 Mont. 418, 426, 107 Pac. 81.

§ 3165.

Where depositions are taken by a notary public, and the person at whose instance they are being taken employs a stenographer to take the testimony down, and the notary merely swears the witnesses and attaches his certificate to each deposition as notary, he is entitled to the statutory fees for administering the oaths to witnesses and attaching his certificate, but he is not entitled to the additional sum of twenty cents per folio for transcribing the testimony. *Coleman v. Northern Pac. Ry. Co.*, 41 Mont. 123, 125, 108 Pac. 582.

§ 3168. Fees of County Clerk.

For filing and recording each instrument of writing allowed by law to be recorded except as hereinafter provided, for first folio thirty cents.

For each subsequent folio or fraction thereof, fifteen cents.

For each entry in index, ten cents.

For certificate that such instrument has been filed and recorded with seal affixed, fifty cents.

For searching any index record of files of the office, for each year when required, in abstracting or otherwise, fifteen cents.

For abstract of title, when required made from original records and files, for each conveyance, encumbrance, or other instrument affecting title, fifty cents.

For a copy of any record or paper, for each folio, fifteen cents; provided that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison and certification of such copy, other than the fee of fifty cents for his certificate and seal.

For filing and recording each declaratory statement of location of quartz, or placer mining claim, mill-site claim, or notice of appropriation of water, including indexes, two dollars.

For filing and indexing each chattel mortgage, a writ of attachment, execution, certificate of sale, lien or other instrument required by law, to be filed and indexed, fifty cents.

For recording and platting each town site or map, for each lot up to and including one hundred, twenty-five cents.

For each additional lot in excess of one hundred, five cents.

For recording the field-notes of survey of any town site, per folio, twenty-five cents.

For filing, recording and indexing each affidavit of annual labor on mining claim, for each claim named therein, one dollar.

For filing and indexing each certificate of incorporation or annual statement of any corporation, one dollar.

For each entry of discharge or satisfaction of mortgage, lien or other instrument on the margin of record thereof, or upon the original instrument, and noting same in index, twenty-five cents.

For administering an oath with certificate and seal, except in application for pension, or in pension certificates, for which no charge shall be made, fifty cents.

For taking and certifying an acknowledgment, with seal affixed, for each signature thereto, fifty cents.

For filing and indexing each affidavit for renewal of chattel mortgage, fifty cents.

For filing and indexing each affidavit of butcher, of brands of cattle slaughtered, fifty cents.

For recording and indexing transcripts in estray and lost property cases, one dollar.

For recording and indexing any land office registers final certificate, (50) fifty cents.

For recording and indexing a real estate mortgage, short form, one dollar and fifty cents.

For recording and indexing a real estate mortgage, long form, two dollars; except when such mortgage exceeds ten folios in which case for every folio over ten an additional twenty cents.

For recording and indexing quitclaim deed, short form, one dollar.

For recording and indexing warranty deed, short form, one dollar and fifty cents.

For filing, or recording, or indexing, any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service. [Amendment approved March 7, 1911; Laws 1911, p. 251.]

§ 3170.

The provisions of section 4637 of the Political Code, making it incumbent upon the clerk of the district court to collect from petitioners, filing letters of administration or guardianship, sums ranging from five to ninety-five dollars, according to the appraised value of the estate, is contrary to the constitutional provision that the legislative assembly shall not levy taxes for county purposes. *Hauser v. Miller*, 37 Mont. 22, 94 Pac. 197.

§ 3176.

Compensation of police judge. See notes post, §§ 3241 and 3297.

§ 3179.

Certificate of clerk to witness. See ante, § 3154.

Duties of clerk as to jurors' certificates. See post, § 3183.

§ 3180. Compensation of Jurors.

A juror must be paid for each day's attendance for the term or session for which he was summoned until excused. He must be paid for all Sundays and legal holidays unless he resides within ten (10) miles from the courthouse, and all jurors residing within ten (10) miles from the courthouse at which he is summoned to appear shall receive no compensation for Sundays or legal holidays, or for any days he may have been absent or excused from attending the court. [Amendment approved February 14, 1913; Laws 1913, p. 23.]

§ 3182.

Memorandum of costs may be amended. See note post, § 6589.

The mileage of his witnesses, which a successful party to an action may recover,

Liability for issuance of spurious certificates. See note ante, § 384.

Implication of issuance according to law. See note post, 6566.

Liability for moneys received from county upon spurious jurors' certificates, bearing no imprint of official seal. See note ante, § 384.

This section does not require the certificate to be addressed to the treasurer; his duty in the premises requires him to pay upon its presentation. *County of Silver Bow v. Davies*, 40 Mont. 418, 425, 107 Pac. 81.

This section is mandatory, both as to the duty of the clerk and of the treasurer. In *re Farrell*, 36 Mont. 254, 261, 92 Pac. 785.

A juror's certificate which does not bear the seal required by this section is void and, therefore, not a subject of forgery. In *re Farrell*, 36 Mont. 254, 266, 92 Pac. 785.

under this section and section 7169, post, is not limited to travel from and to their places of residence; whether the mileage shall be computed from the place of residence will depend upon the circumstances of each case. *Lynes v. Northern*

Pac. Ry. Co., 43 Mont. 317, 330, Ann. Cas. 1912C, 183, 117 Pac. 81.

§ 3183.

Duties of clerk as to jurors' certificates. See ante, § 3179.

Certificate of clerk to witness. See ante, § 3154.

Liability for issuance of spurious certificates. See note ante, § 384.

Implication of issuance according to law. See note post, § 6566.

This section does not require the certificate to be addressed to the treasurer; his duty in the premises requires him to pay upon its presentation. County of Silver Bow v. Davies, 40 Mont. 418, 425, 107 Pac. 81.

The clerk must observe the same formalities in issuing jurors' certificates as in issuing witnesses' certificates. County of Silver Bow v. Davies, 40 Mont. 418, 426, 107 Pac. 81.

§ 3202.

The entire municipal code, comprising all of title III, sections 3202-3549, is to be treated as one statute, whose provisions are interdependent. Brown v. Foster, 48 Mont. 114, 118, 135 Pac. 993.

Meaning of "town"; a town, without incorporation or municipal character, is

sometimes recognized as an entity; an unincorporated town is eligible to become a candidate for the county seat of a new county. State v. Dale, 47 Mont. 227, 232, Ann. Cas. 1914D, 227, 131 Pac. 670.

The legislature has used the term "town," in different statutes, as one of varying significance; it is not correct to say that, whenever an unincorporated town is meant, it has explicitly so declared; or that the use of the term "town," without any definite prefix, is in all cases intended to be an incorporated town. State v. Dale, 47 Mont. 227, Ann. Cas. 1914D, 227, 131 Pac. 670.

Where damages are sought to be recovered from a city for injuries to real property, in a designated year, it is not necessary to allege that the defendant was a municipal corporation at the time of the wrongful act, where the complaint does aver that the city "is a municipal corporation, organized and existing under the laws of the state"; the court will take judicial notice of its status at the time of the alleged wrongful act. Drew v. City of Butte, 44 Mont. 124, 125, 119 Pac. 279.

Editorial Notes.

"Town" as limited to incorporated town. Ann. Cas. 1914D, 230.

"City" as including town or village. Ann. Cas. 1914B, 215.

CITIES AND TOWNS.

§ 3208. Organization of Cities and Towns—Petition and Census.

Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than fifty qualified electors, residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof, which must not exceed one square mile for each five hundred inhabitants residents therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by them in the county clerk's office. No municipal corporation must be formed unless the number of inhabitants is three hundred or upwards. [Amendment approved March 3, 1909; Laws 1909, p. 63.]

§ 3212.

Establishment of highway by prescription. See note ante, § 1340.

Meaning of term, "town." See note ante, § 3202.

Unincorporated town as an entity. See note ante, § 3202.

Editorial Notes.

Necessity that property annexed to municipality shall be adjacent or contiguous thereto. Ann. Cas. 1913D, 401.

§ 3214.

Meaning of term, "town." See note ante, § 3202.

§ 3216.

Powers of mayor. See post, § 3250.

Status of policeman as an officer. See note post, § 3250.

Chief of police as a "policeman." See note post, § 3304.

Incompatible offices. See note ante, § 420.

This section, in so far as it provides for the appointment and removal of police officers, is repealed by the act of 1907, section 3317, post; the method of appointment and removal provided by the later law is wholly inconsistent with the notion that the mayor and council are authorized to exercise the power of appointment as provided in the older law. *State v. Quinn*, 40 Mont. 472, 480, 107 Pac. 506.

The grant of power in this section, in the matter of prescribing the duties and

fixing the compensation of city officers, is subject not only to the express and implied limitations found elsewhere in the title, but contains in itself a limitation in which the power granted may be executed. *McGillic v. Corby*, 37 Mont. 249, 254, 17 L. R. A. (N. S.) 1263, 95 Pac. 1065, discussing the validity of an ordinance providing compensation for an acting mayor.

§ 3217.

Construction of statute. See note ante, § 3304.

Construction of the metropolitan police law. See note post, § 3304.

Incompatible offices. See note ante, § 420.

§ 3218.

Incompatible offices. See note ante, § 420.

Construction of metropolitan police law. See note post, § 3304.

Removal of officers. See note ante, § 3216.

§ 3219. Trustees of Public Libraries—Funds.

The trustees of any public library created or existing in a city or town must be appointed by the mayor with the advice and consent of the council. The number of such trustees and their duties must be prescribed by ordinance, provided, however, that the "Library Fund" provided for in section 3488 of this code shall be invested by the city treasurer under the direction of the trustees of the library; and no money shall be paid out of said fund by him except on an order or warrant from said trustees, who shall have exclusive power to make contracts and expenditures for the support and maintenance of the library, and the purchase of books and other things for a library. [Amendment approved March 8, 1915; Laws 1915, p. 255.]

§ 3220.

Status of policeman as an officer. See note post, § 3250.

Incompatible offices. See note ante, § 420.

This section, authorizing the city council to discharge "any officer," whose appointment is made by the mayor with the advice and consent of the council, has no application to a fireman; section 3327, post,

declares that he is not to be deemed a municipal officer. *State v. City of Anaconda*, 41 Mont. 577, 581, 111 Pac. 345.

The city council may, by a bare majority vote, abolish the office of city purchasing agent, at any time, and discharge the person appointed to fill it; hence, if the incumbent of it be an alderman, the two offices are incompatible. *State v. Wittmer*, 50 Mont. 22, 144 Pac. 648.

§ 3223. Division of Cities into Wards.

Cities of the first class must be divided into not less than four nor more than ten wards; cities of the second class into not less than three nor more than six, and cities of the third class into not less than two nor more than four wards, and towns into not less than two nor more than three wards. All changes in the number and boundaries of wards must be made by ordinance, and no new ward must be created unless there shall be within its boundaries one hundred and fifty electors, or more. [Amendment approved March 4, 1909; Laws 1909, p. 103.]

§ 3228.

This section is of general application, and controls aldermanic candidates who

aspire to office at a first election after incorporation, as well as to those who seek like honors at subsequent elections. *Brown v. Foster*, 48 Mont. 114, 119, 135 Pac. 993.

§ 3232. Election Judges and Clerks—Voting Places.

The council must appoint judges and clerks of election and places of voting. There must be at least one place of voting in each ward, and there may be as many more as the council by ordinance shall fix, and the elector must vote in the ward in which he resides. The election precincts in a city or town must correspond with wards, but a ward may be subdivided into several voting precincts, and when so divided the elector shall vote in the precinct in which he resides, and all elections must be conducted according to the general laws of the state. In all cities where voting machines are used, the city council must subdivide the wards into such number of voting precincts that there will be no more than six hundred votes in each precinct. [Amendment approved March 3, 1909; Laws 1909, p. 65.]

§ 3234.

When a person is elected or appointed to a city office, his failure to qualify within ten days, by taking the official oath, creates a vacancy, which may be filled by the appointing power. *State v. Duncan*, 47 Mont. 447, 453, 133 Pac. 109.

If one appointed as a policeman takes the oath of office, before entering upon his probationary term, it is not necessary for him, upon receiving his permanent appointment, to qualify by again taking and subscribing the official oath; the permanent appointment is nothing more or less than a confirmation of the original appointment, and does not mark the beginning of a new term of service by the appointee, as though he had been appointed for another term to another office. *State v. Duncan*, 47 Mont. 447, 455, 133 Pac. 109.

§ 3236.

This section, not section 3263, post, governs the filling of vacancies in a city council, caused by resignation or death; a majority of those constituting the actual membership of the body at the time is sufficient to fill a vacancy in an elective city office; thus, if the full membership is sixteen, but, at a given time, has been in fact reduced by the resignation of one, there are fifteen members, and a majority of fifteen, or eight, can, by election, fill a vacancy. *State v. Willis*, 47 Mont. 548, 552, 133 Pac. 962.

Until written charges are filed with a city council, no proceeding, looking to the removal of a city officer, has been instituted. *State v. Mayor*, 43 Mont. 61, 64, 114 Pac. 777.

The office of police judge is a creature, not of the constitution, but of the statute; and the incumbent is not liable to impeachment, but he is a city officer and, in a proper case, may be removed by the city

council. *State v. Mayor*, 43 Mont. 61, 63, 114 Pac. 777.

An alderman is guilty of misconduct in office where he, in his capacity as an attorney at law, defends a person charged with conducting business without paying a license tax, and accepts a retainer to prosecute a suit against a town for damages, and for an injunction in regard to a sewer; and he may be removed from office for such misconduct. *State v. Board of Aldermen*, 45 Mont. 188, 194, 122 Pac. 569.

If a person has been duly elected a member of the city council, and has taken and subscribed the constitutional oath of office, he is entitled to be seated as a member of the council and to have his vote on the question of filling another vacancy recorded, though he has no certificate of election. *State v. Willis*, 47 Mont. 548, 553, 133 Pac. 962.

An officer may be removed for misconduct though his act was not "willful." *State v. Board of Aldermen*, 45 Mont. 188, 195, 122 Pac. 569.

§ 3238.

Statute of limitations. See notes post, §§ 6447, 6449.

Liability of a public officer for interest received on public funds. *Ann. Cas.* 1914C, 1016.

In this state, a city treasurer is not an insurer of the public funds; he is a trustee of them for the use of the city, and must account for and pay over any profits derived from the use of the trust fund. *City of Butte v. Goodwin*, 47 Mont. 155, 163, *Ann. Cas.* 1914C, 1012, 134 Pac. 670.

The official bond of a city treasurer is not a contract in the strict sense of that term; it is rather a collateral security for the faithful performance of official duty. *City of Butte v. Goodwin*, 47 Mont. 155, 167, *Ann. Cas.* 1914C, 1012, 134 Pac. 670.

§ 3240. Salaries of Mayor and Aldermen.

The annual salary of a mayor of a city of the first class must not exceed four thousand dollars; and the annual salary of the mayor of a city of the second class must not exceed two thousand dollars; and the annual salary of the mayor of a city of the third class must not exceed six hundred dollars; and each alderman in a city of the first class may be allowed and paid not exceeding six dollars per diem, to be fixed by ordinance, for each day of session held by city council; provided, that no alderman shall be paid for more than five days' service during any one month; and aldermen of cities of the second and third class may be allowed and paid not exceeding three dollars per diem for each day of session, to be fixed by ordinance, but no alderman shall be paid for more than two days' service during any one month. No salary or compensation shall be allowed to the mayor or alderman of a town. No person shall be elected to the office of mayor or alderman in any city who is not a resident and freeholder within the limits of the city. [Amendment approved March 17, 1913; Laws 1913, p. 453.]

§ 3241.

Removal of officer for collecting illegal fees. See note post, § 9006.

This section is exclusive and a police judge is not entitled to additional compensation for services performed as justice

of the peace, or committing magistrate. *State v. District Court*, 44 Mont. 318, 323, Ann. Cas. 1913B, 396, 119 Pac. 1103.

§ 3242.

Violation of city ordinance is not a "public offense." See note post, § 9677.

§ 3245. Salary of Chief of Police.

The annual salary and compensation of the chief of police must be fixed by ordinance and must not exceed in cities of the second class, one hundred and fifty (\$150) dollars per month; and in cities of the third class not to exceed one hundred and twenty-five (\$125) dollars per month. [Amendment approved February 25, 1911; Laws 1911, p. 91.]

§ 3248.

Duty to file. See note post, § 3253.

Failure for ten days to qualify, effect of. See note ante, § 3234.

§ 3250.

Officers of city of the first class. See ante, § 3216.

Chief of police as a policeman. See note post, § 3304.

This section, in so far as it provides for the appointment and removal of police officers, is repealed by the act of 1907, section 3317, post; the method of appointment and removal provided by the later law is wholly inconsistent with the notion that the mayor and council are authorized to exercise the power of appointment as provided in the older law. *State v. Quinn*, 40 Mont. 472, 480, 107 Pac. 506.

One who alleges that a meeting of the council, held for a specified purpose, was a special one and illegal because it was held without notice, proclamation or message from the mayor, must sustain the

burden of proof. *O'Brien v. Drinkenberg*, 41 Mont. 538, 543, 111 Pac. 137.

To convene the council in special session, a formal proclamation from the mayor is not necessary; neither is notice required, nor a message stating the object of the meeting. *O'Brien v. Drinkenberg*, 41 Mont. 538, 546, 111 Pac. 137.

Evidence sufficient to prove that a meeting of the council was a special one, had in conformity with law. *O'Brien v. Drinkenberg*, 41 Mont. 538, 543, 546, 111 Pac. 137.

A policeman is not a state officer; nor is he, strictly speaking, a "municipal" officer. He is *sui juris*, occupying a unique place of his own. *State v. Edwards*, 38 Mont. 250, 266, 99 Pac. 940. Compare *Farrell v. Board of Trustees*, 85 Cal. 408, 24 Pac. 868.

Prior to 1907, the mayors of cities and towns had power, under this section, to suspend or remove policemen, but the act of that year, establishing a peace commission in cities and towns, took away that power from such officers, except as otherwise provided in the act itself. *State v. Edwards*, 38 Mont. 250, 271, 99 Pac. 940.

§ 3251.

Proof that meeting was a special one. See note ante, § 3250.

§ 3252.

Under this section, the council may or may not elect a president. When elected, he must be held to know whether provision has been made for his compensation; if none has been made in the mode prescribed by law, then he is entitled to none, and he has no legal claim against the city therefor. *McGillie v. Corby*, 37 Mont. 249, 255, 17 L. R. A. (N. S.), 1263, 95 Pac. 1063.

§ 3253.

The mayor of a city in Montana is not required to keep a record of his official acts; the duty to keep the files and records of the city appertains to the clerk, who is bound to deliver them to his successor. *City of Butte v. Nevin*, 46 Mont. 380, 383, 128 Pac. 600.

If the mayor chooses to keep a record including copies of documents which must be preserved in the files of the clerk's office, they are his private property, and title to them does not vest in the city by virtue of the fact that he is acting as its chief executive at the time.

§ 3257. Duties of City Treasurer.

It shall be the duty of the city treasurer:

1. To receive all moneys that come to the city or town either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.
2. To perform such duties in the collection of taxes, licenses or assessments as are or may be prescribed by law or ordinances.
3. To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the city or town received by him, and by him disbursed, during the preceding month, and the state of each particular fund, which statement must be verified by his oath.
4. To keep the books and accounts of the city or town in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council or any member thereof.
5. To keep a separate account of each fund or appropriation and the debits and credits thereof.
6. To give every person paying to him money as treasurer, a receipt therefor, specifying the date of payment, the amount and for what paid.
7. To render at any time an account to the council, showing the money on hand and the condition of the treasury.
8. To keep a register of all warrants paid, called "The Registry Book," which must show the date, amount and number, and the person to whom,

City of Butte v. Nevin, 46 Mont. 380, 383, 128 Pac. 600.

Where accountants are employed to audit the books of a city and their contract calls for a report to the city, but before it is made two copies thereof are handed to the mayor, at his request, one of which he presents to the city council, and the other he receives as his own, the mayor's duty is fully discharged, after seeing that the copy presented to the council finds its way into the hands of the city clerk, and is by him filed among the records of his office; the mayor has a right to retain the other copy among his private papers. *City of Butte v. Nevin*, 46 Mont. 380, 383, 128 Pac. 600.

If a person has been lawfully elected a member of the city council, and has taken the required oath, the intention of the law is, that the oath, when taken and subscribed, shall become a record of the office, and it is the clerk's duty to file and keep it as such; it is also the clerk's duty to record the newly elected officer's vote on any question; and the performance of the clerk's duty, in either respect, may be enforced by mandamus. *State v. Willis*, 47 Mont. 548, 553, 133 Pac. 962.

§ 3254.

Chief of police as a "policeman." See note post, § 3304.

and the fund from which the same was paid, and to deliver and file with the city clerk all vouchers, warrants or orders paid by him.

9. To annually make out and submit to the city council, at its last meeting prior to May first a detailed account of all receipts and expenditures during the past fiscal year, file the same with the clerk, and an abstract thereof must be published in some newspaper in the city or town, or if none is published, such abstract must be posted in the room or building occupied by the council.

10. To pay out in the order which they are registered all warrants presented for payment, when there are funds in the treasury to pay the same.

11. No money must be transferred from one fund to another, except by ordinance or resolution of the council.

12. To deposit all public moneys in his possession and under his control, excepting such as may be required for current business in any solvent bank or banks located in such city or town, subject to national supervision or state examination, as the council shall designate and no other, and the sums so deposited shall bear interest at the rate of two and one-half ($2\frac{1}{2}$) per centum per annum payable quarter annually.

The treasurer shall take from such banks such security in public bonds or other securities or indemnity bonds as the council may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits on demand.

When more than one such bank be available in any city or town, such deposits shall be distributed ratably among all such banks qualifying therefor, substantially in proportion to the paid in capital of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of the treasurer to prorate all such deposits among all the banks in such city or town qualified to receive same as in this act provided, to the end that an equitable distribution of such deposits be maintained, but the amount so deposited in any bank shall at no time exceed the amount of the paid in capital of such bank.

If no such bank exists in the city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys or any portion thereof shall be deposited under the terms of this act in the bank or banks most convenient to such city or town willing to accept such deposits under the terms of this act and qualified as above provided.

Any bank or banks receiving such deposits shall, through its president and cashier, make a statement quarter annually of account under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balances in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be

made, or permitted to remain, in any bank until the security for such deposits shall have been first approved by the council and delivered to the treasurer. All interest paid and collected on such deposits shall be credited to the general fund of the city or town.

When moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any deposit that may occur through damage by the elements, or for any other cause or reason occasioned through means other than his own neglect, fraud or dishonorable conduct. [Amendment approved March 14, 1913; Laws 1913, p. 390.]

§ 3258.

Status of policeman as an officer. See note ante, § 3250.

§ 3259.

Power of legislature as to cities and towns. See note post, § 3318.

Appropriation of money for city's expenditures. See post, § 3287.

Establishment of highway by prescription. See note ante, § 1340.

Exclusive power of city council over streets and highways. See note post, § 3369.

Incurring of indebtedness by city that has reached the constitutional limit of indebtedness, how limited. See note post, § 3287.

Construction of metropolitan police law. See note post, § 3304.

Status of policeman as an officer. See note ante, § 3250.

Power to make public improvements at private expense. See note post, § 3367.

This section specifies the items of expense which a city that has not reached the constitutional limit of indebtedness may incur. *Palmer v. City of Helena*, 40 Mont. 498, 505, 107 Pac. 512.

The authorities that control streets and highways may use, or permit the use of, them in any manner or for any purpose that is reasonably incident to the appropriation of them for public travel, or for the ordinary uses of streets or highways under the different conditions that, from time to time, arise. *Kipp v. Davis-Daly Copper Co.*, 41 Mont. 509, 516, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666, 110 Pac. 237.

The use of a street railway for the purpose of hauling supplies, ores, merchandise, etc., to and from a company's mine, is a public use; and it casts no additional servitude upon the owner of abutting real property for which compensation must first be made, but falls within the ordinary uses of streets. *Kipp v. Davis-Daly Copper Co.*, 41 Mont. 509, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666, 110 Pac. 237.

The frequent use, in the laws of this state, of the prefix "street," before "railroads" or "railways," indicates the legis-

lative intention to maintain a distinction between railroads and street railroads, and suggests that, in construing enactments touching railroads, they should not be held to apply to street railroads, unless the intention that they shall so apply is apparent. *Helena etc. Ry. Co. v. City of Helena*, 47 Mont. 18, 34, 130 Pac. 446.

The twelfth subdivision of this section, granting city or town councils power to compel the lighting of any "railroad" track within a city or town, "the cars of which are propelled by steam or otherwise," at the expense of the owner, does not apply to street railroads; hence, an ordinance requiring a street railway company to light its tracks within the corporate limits, without expense to the city, is void. *Helena etc. Ry. Co. v. City of Helena*, 47 Mont. 18, 37, 130 Pac. 446.

The mode of exercising the power granted by the sixty-third subdivision of this section is subject to the limitation prescribed by section 3278, post; this limitation is, furthermore, exclusive, and applies to all municipal bodies. *Missoula St. Ry. Co. v. City of Missoula*, 47 Mont. 85, 95, 130 Pac. 771.

Where the Constitution has authorized the legislature to extend the limit of municipal indebtedness beyond the constitutional limit of three per cent of the value of taxable property, when such increase is necessary to procure a water supply or for the construction of a sewer system, the legislature may, by a general law applicable to all municipalities alike, make such extension, as it has done, in subdivision 64 of this section, without first determining whether a necessity exists for extending the limit; that is not a question for the legislature, but is one properly left to the people, who must pay the additional taxes required in order to discharge the debt to be incurred. *Carlson v. City of Helena*, 39 Mont. 82, 98, 17 Ann. Cas. 1233, 102 Pac. 39.

In considering an indebtedness for water and light, it has been said that the purpose of the limitation in matters of indebtedness, contained in this section, is to prevent extravagance, and that it should be so interpreted as to accomplish the desired end as far as possible. *Butler v. Andrus*, 35 Mont. 575, 580, 90 Pac. 785.

The legislature cannot coerce a city to procure a particular water supply. *State v. Edwards*, 42 Mont. 135, 148, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078, 111 Pac. 734.

The sixty-fourth subdivision of this section does not make it incumbent upon a city, desiring to acquire a water supply of its own, to purchase the system then maintained therein, by any person or corporation, under a franchise granted or contract made by the municipality; the course to be pursued, pointed out in the proviso of this subdivision, relative to the purchase of the then existing system, is obligatory only when the city "desires" to so purchase; if not, it may procure any other available supply. *Carlson v. City of Helena*, 39 Mont. 82, 99 17 Ann. Cas. 1233, 102 Pac. 39.

After a city council has ascertained that a pure and wholesome supply of water, ample for the needs of the city and its inhabitants, is available, and that the cost of installing such supply is within the compass of the sum that the city can lawfully expend for that purpose, there can be no possible objection to allowing the voters to speak as to the propriety of securing the particular supply. *Carlson v. City of Helena*, 43 Mont. 1, 7, 114 Pac. 110.

A city, after having necessarily and legally incurred an outstanding indebtedness for a water supply and a sewer system, under the ten per cent limit, may afterward incur an additional indebtedness of five thousand dollars, under the three per cent limit, for building a bridge, where the existing indebtedness of the city, incurred under the three per cent limit, has fallen below that limit by reason of payments thereon, or on account of the fact that the assessed valuation of taxable property has increased so as to leave a sufficient margin within the three per cent limit. *Arnold v. City of Miles City*, 46 Mont. 478, 479, 128 Pac. 915.

It is only for special purposes, to wit, sewerage systems and water supplies, that cities may incur indebtedness in excess of the constitutional limit of three per cent, when authorized by the taxpayers, but the constitutional provision does not limit the amount to which the legislature may authorize the taxpayers to extend the indebtedness. *Arnold v. City of Miles City*, 46 Mont. 478, 481, 128 Pac. 915.

It was the intention of the law-making powers to compel a city to refrain from becoming indebted for general purposes in an amount in excess of three per cent of the value of its taxable property; but the legislative ten per cent limit, for special purpose, to wit, sewerage systems and water supplies, is to be regarded as an addition to the three per cent originally authorized by the Constitution. *Arnold v. City of Miles City*, 46 Mont. 478, 482, 128 Pac. 915.

Under the sixty-fifth subdivision of this section, the town council has power to condemn a sidewalk and to order a new one in its stead; in doing so, it exercises a legislative function, and its action, except for fraud or abuse of discretion, is not subject to judicial review. *O'Brien v. Drinkenberg*, 41 Mont. 538, 544, 548, 111 Pac. 137.

The laws of 1913, chapter 89, did not take away from cities the powers they had under the sixth and eightieth subdivisions of this section; the purpose of those laws was to provide a more simple and practicable procedure by which special improvement districts might be created, not to grant powers. *Shapard v. City of Missoula*, 49 Mont. 269, 274, 141 Pac. 544.

As a city council has, under this section and section 3287, post, the sole power to determine the amount that shall be expended in carrying on the city government, it, and not the mayor, has the power to reduce the police force for economical reasons, or when it becomes unnecessarily large. *State v. Mayor of Butte*, 43 Mont. 331, 336, 117 Pac. 604.

Under section 3470, post, the fee to the land covered by a street once established is vested in the public; for the form of dedication required of the owner, when the plat of a city or town, or an addition thereto is recorded, is equivalent to a deed; but, as the respective rights of the abutting owners and of the public are dependent upon the fact of dedication, it is not important to inquire where the fee is vested. *Kipp v. Davis-Daly Copper Co.*, 41 Mont. 509, 516, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666, 110 Pac. 237.

An ordinance regulating the construction and maintenance of livery-stables is contrary to the fourteenth amendment. *Billings v. Cook*, 35 Mont. 95, 104, 119 Am. St. Rep. 845, 88 Pac. 656.

The telegraph and telephone business is subject to police regulations; the legislature has, by section 4400, post, left to the cities and towns of this state a free hand to exercise the police powers as to that business; and municipalities may, therefore, regulate telegraph and telephone companies respecting the use of streets for their poles. *City of Butte v. Montana I. Tel. Co.*, 50 Mont. 574, 148 Pac. 384.

Editorial Notes.

Health, laws and regulation of and their validity. 47 Am. St. Rep. 541.

Cemeteries, power of municipal corporations to regulate, prohibit or discontinue. 87 Am. St. Rep. 678.

Municipal regulation of billboards and signs. Ann. Cas. 1913D, 958.

Keeping of billiard or pool table as subject of exercise of police power. Ann. Cas. 1913D, 1052.

Streets, vacation of, its effect and the remedies of parties prejudiced thereby. 46 Am. St. Rep. 493.

Grant by city of right to use streets and sidewalks for a private purpose. 125 Am. St. Rep. 343.

Method of lighting streets as resting in municipal discretion. Ann. Cas. 1912D, 432.

Right of municipality to use or permit to be used part of sidewalk for planting of grass, trees, etc. Ann. Cas. 1912D, 1236.

Power of municipality to remove shade trees from streets. Ann. Cas. 1913C, 1013.

Vacation of streets. 26 L. R. A. 821.

§ 3263.

This section does not apply to an election by a city council to fill vacancies in its own body, caused by resignation or death; the one applicable is section 3236, ante. State v. Willis, 47 Mont. 548, 551, 133 Pac. 962.

§ 3265.

An ordinance that authorizes the calling of a special election for the authorization or rejection of an increase of the city's indebtedness by the issuance of water "and" sewer bonds, is not obnoxious to the prohibition of this section, relative to an ordinance "containing more than one subject"; the general subject of the ordinance is the incurring of the indebtedness, and the different purposes named in it, as making the indebtedness necessary, are matters of detail for the information of the voters. Carlson v. City of Helena, 39 Mont. 82, 108, 17 Ann. Cas. 1233, 102 Pac. 39.

Editorial Notes.

Necessity that title of municipal ordinance fully express subject matter. Ann. Cas. 1912C, 192.

§ 3266.

Policy of the state as to local self-government. See note post, § 3318.

§ 3268.

This section is a part of the initiative and referendum law applicable to cities, sections 3266-3276, and the provision therein, that no ordinance passed by the council of a city shall become effective until thirty days after its passage, has no application to an ordinance providing for the issuance of water and sewer bonds, after sanction of the taxpayers affected thereby has been obtained; the referendum provisions of the statute deal with matters of general legislation on which all electors, whether taxpayers or not, may vote, while taxpayers only are entitled to vote on the question of the city council's authority to issue bonds. Carlson v. City of Helena, 39

Mont. 82, 113, 17 Ann. Cas. 1233, 102 Pac. 39.

§ 3276.

Policy of the state as to local self-government. See note post, § 3318.

§ 3278.

Construction of section. See note ante, § 3259.

Council's powers as to the doing of street work. See note post, § 3369.

This section does not require notice to be given; the only requirement is that the contract shall be let to the lowest responsible bidder; hence, to successfully attack the awarding of a contract by the council, the assailant must show that there was not any opportunity afforded for competitive bidding and that the contract was not let to the lowest responsible bidder; or, that there was collusion or bad faith on the part of the council; or, such gross mistake as to preclude the exercise of sound judgment. O'Brien v. Drinkenberg, 41 Mont. 538, 550, 111 Pac. 137.

The requirement of this section, as to expenditures, extends to those made from the general revenues of a city as well as from funds derived from special assessments. Ford v. City of Great Falls, 40 Mont. 292, 313, 127 Pac. 1004.

A contract with a city for the construction of a system of waterworks is governed by the provisions of this section and sections 3279-3281, post, and not by sections 3283 and 3288; it was not the purpose of the statute that such a claim, and others specifically provided for by the law, should be verified, as required in section 3283, post, as a condition precedent to the institution of an action thereon. City of Forsyth v. Crellin, 210 Fed. 835, 838.

A contract between a city and a street railway company, that the latter shall move and replace the company's tracks on two streets of the city, at the expense of the city, is void, it not having been let to the lowest responsible bidder, as required by this section. Missoula St. Ry. Co. v. City of Missoula, 47 Mont. 85, 96, 130 Pac. 771.

Where streets are to be improved, the council may specifically require the use of bitulithic pavement, a patented process, where the principle of free competition between bidders or contractors is retained. Ford v. City of Great Falls, 46 Mont. 292, 309, 127 Pac. 1004.

All public contracts for sums in excess of two hundred and fifty dollars must be let to the lowest bidder. City of Butte v. Bennett (Mont.), 149 Pac. 92.

Editorial Notes.

Construction of "lowest responsible bidder" or similar phrase in statute

providing for letting of municipal contracts. Ann. Cas. 1913A, 500.

Remedy of lowest bidder for refusal of authorities to award contract to him. 30 L. R. A. (N. S.) 126.

§ 3282.

It was the purpose of this section and of section 3283, post, to protect cities and towns from actions upon demands of which they have had no previous notice; those sections do not apply to illegal exactions made by the municipality. *Reilly v. Hatheway*, 46 Mont. 1, 10, 125 Pac. 417.

If a city exacts a license tax from a groceryman, solely for the purpose of raising revenue, such tax is illegal, and the taxpayer may maintain an action to recover the amount paid by him, under protest, without having presented any claim to the city council. *Reilly v. Hatheway*, 46 Mont. 1, 10, 125 Pac. 417.

§ 3283.

Application of section. See note ante, § 3278.

Purpose of section. See note ante, § 3282.

Verification of claims. See note ante, § 3278.

§ 3287.

All accounts and demands against a city must be submitted to the council, and, if found correct, must be allowed and paid. *State v. Mayor of Butte*, 43 Mont. 331, 335, 117 Pac. 604.

Under this and the next succeeding section, a city, indebted beyond the limit prescribed by the Constitution, is permitted to conduct its affairs upon a cash basis and pay "reasonable and necessary current expenses from its current revenues," etc., but the authority of such a city extends no further than to make expenditures both reasonable and necessary for the corporate existence of the city; in other words, the right to expend public money is limited to those items of expense which may properly be designated as "living expenses." *Palmer v. City of Helena*, 40 Mont. 498, 507, 107 Pac. 512.

A city, indebted beyond the limit prescribed by the Constitution, cannot use its revenues, derived from any source, to acquire an electric light plant to supply itself and its inhabitants with light, while it has at hand an available source of supply, which has been and now is sufficient to meet all requirements; an expenditure of this character does not fall within the meaning of "reasonable and necessary current expenses," which such a city may incur under this section and section 3288, post. *Palmer v. City of Helena*, 40 Mont. 498, 504, 107 Pac. 512.

If a city that has reached its constitutional limit of indebtedness, has not taken

advantage of this section and of the next one, enacted for its benefit, it will not be heard to urge its failure to do so as an excuse for its violation of sections 3328 or 3329, post, by suspending firemen or diminishing the force for the purpose of reducing expenses. *State v. City of Anaconda*, 41 Mont. 577, 584, 111 Pac. 345.

§ 3288.

Application of section. See note ante, § 3278.

Construction of section. See note ante, § 3287.

This section has no reference to a claim for salary fixed by ordinance. See note ante, § 375.

Effect of taking advantage of section. See note ante, § 3287.

Verification of claims. See note ante, § 3278.

§ 3289.

One purpose of this section is to enable the city to avoid the expense of litigation, if investigation discloses a legal liability on its part; for this reason, it is not sufficient that the city officers have notice of the defect; it is knowledge of the injury which the statute requires shall be brought to the attention of the city authorities. *Tonn v. City of Helena*, 42 Mont. 127, 133, 36 L. R. A. (N. S.) 1136, 437, 111 Pac. 715.

The provisions of this section are applicable alike to injuries to person and injuries to property; to state a cause of action, in either case, the complaint must allege that the required notice was given. *Butte Machinery Co. v. City of Butte*, 43 Mont. 351, 352, 116 Pac. 357; overruled in *Kelly v. City of Butte*, 44 Mont. 115, 118, 119 Pac. 171.

This section applies only to injuries to persons, as distinguished from injuries to property. *Kelly v. City of Butte*, 44 Mont. 115, 118, 119 Pac. 171; overruling *Butte Machinery Co. v. City of Butte*, 43 Mont. 351, 116 Pac. 357.

A defective plan, adopted for the construction of a sewer, causing injury to a mine by flooding it, is not a "defect," within the meaning of this section. *Kelly v. City of Butte*, 44 Mont. 115, 117, 119 Pac. 171.

This section, requiring the giving of notice of a personal injury, occasioned by a defective sidewalk, as a prerequisite to the recovery of damages from the city or town, is not unconstitutional as making an unjust discrimination in favor of municipalities and against all others, who may be defendants in personal injury actions; the classification made by this section is not unreasonable, and, where all cities and towns are treated alike, it cannot be said that the particular city or town in which the injury occurred is granted a special

immunity, where the notice provided for has not been given. *Tonn v. City of Helena*, 42 Mont. 127, 133, 36 L. R. A. (N. S.) 1136, 111 Pac. 715.

A statute is not open to objection merely because it is class legislation; if the classification is reasonable, and all members of a given class receive equal protection, the statute will be upheld. *Tonn v. City of Helena*, 42 Mont. 127, 133, 36 L. R. A. (N. S.) 1136, 111 Pac. 715.

The giving of notice of injury is *prima facie* sufficient where, upon its face, it purports to have been given, in the plaintiff's behalf, by the attorneys who brought the action for him. *McEnaney v. City of Butte*, 43 Mont. 526, 533, 117 Pac. 893.

A notice signed by the attorney for the injured person, as such, is sufficient. *Pullen v. City of Butte*, 45 Mont. 46, 55, 121 Pac. 878.

It is sufficient that the notice be filed with the city clerk. *Tiggerman v. City of Butte*, 44 Mont. 138, 142, 119 Pac. 477.

"Any defect in any sidewalk," includes any and every defect, deficiency, or obstruction that interferes with the proper use of the walk, such as an accumulation of snow and ice thereon. *Tonn v. City of Helena*, 42 Mont. 127, 133, 36 L. R. A. (N. S.) 1136, 111 Pac. 715.

Notice to a city is not a prerequisite to a suit against it for injuries caused by the flooding of a mine, in consequence of a defective plan adopted by the city for the construction of a sewer. *Kelly v. City of Butte*, 44 Mont. 115, 117, 119 Pac. 171.

Editorial Notes.

Validity of requirement of notice of injury as a condition of municipal liability. 36 L. R. A. (N. S.) 1136.

Validity of statute or section of municipal charter requiring notice of injury as condition to recovery from municipal corporation. 3 N. C. C. A. 437.

Where the notice of injury by a traveler on a street served upon the council meets all the statutory requirements, additional matter therein is surplusage. *Irving v. Town of Stevensville (Mont.)*, 149 Pac. 483.

Editorial Notes.

To whom presentation of claim against municipality may be made. Ann. Cas. 1913A, 348.

§ 3297.

This section and section 3300, post, merely confer jurisdiction upon the police court or judge in the cases and proceedings enumerated; the compensation to which he is entitled is provided for in section

3241, ante. *State v. District Court*, 44 Mont. 318, 322, Ann. Cas. 1913B, 396, 119 Pac. 1103.

§ 3298.

Removal of officer for collecting illegal fees. See note post, § 9006.

Violation of city ordinance is not a "public offense." See note post, § 9677.

The police court has concurrent jurisdiction with the justices' courts to punish vagrancy, as a crime against the state as distinguished from an offense against the city, and such prosecution must be instituted and conducted in the name of the state. *State v. District Court*, 37 Mont. 202, 208, 95 Pac. 841.

The city of Butte has express authority from the state to define vagrancy by ordinance and to punish the same, and the police court of that city has exclusive jurisdiction of all proceedings for the violation of the ordinance, and prosecutions thereunder must be conducted in the name of the city. *State v. District Court*, 37 Mont. 202, 208, 95 Pac. 841.

Whether a prosecution for vagrancy should be in the name of the state or of the city. See *State v. District Court*, 37 Mont. 202, 204, 95 Pac. 841.

§ 3304.

Examining and trial board. See post, § 3307.

Officers of towns. See ante, § 3218.

Officers of city of the second class, and of the third class. See ante, § 3217.

General legislative power as to appointment of policemen. See ante, § 3259.

Repeal because of inconsistency. See notes, ante, §§ 3216 and 3250.

Sections 3304-3312 constitute the metropolitan police law. *State v. Duncan*, 47 Mont. 447, 133 Pac. 109.

The police force cannot be abolished as a whole, because the city is required to maintain it; nor can it be abolished in part; the power of the city extends only to a reduction in its number for economical reasons, and it must be exercised in good faith. *State v. Edwards*, 40 Mont. 287, 306, 20 Ann. Cas. 239, 106 Pac. 995.

Our metropolitan police law, sections 3304-3317, contemplates that, in addition to the office of chief of police, which the act itself creates, there shall be different grades and other offices established by the city council, as indicated in section 3314, post, or by the mayor in the event the council fails to act, as shown by section 3305, post. *State v. Duncan*, 49 Mont. 54, 58, 140 Pac. 95.

The metropolitan police law, sections 3304-3317, placing the police departments under civil service rules, is mandatory as

to cities of the first class, but it is left optional with the authorities of the smaller cities and towns whether they shall bring themselves within its provisions. *Grush v. Bishop*, 46 Mont. 97, 101, 126 Pac. 619.

A chief of police, whose duties are the same as those of an ordinary policeman, except the additional one, of supervision and control of the entire force, imposed upon him, is a "policeman," and cannot be removed from office in any other manner than that indicated in this act, sections 3304-3317, which places the police departments of cities under civil service rules. *State v. Quinn*, 40 Mont. 472, 107 Pac. 506.

§ 3305.

Appointments to be made from eligible list. See § 3310, post.

Provisions for different grades and offices. See note ante, § 3304.

Power to reduce police force. See note ante, § 3259.

Repeal because of inconsistency. See notes ante, §§ 3216 and 3250.

A city ordinance, providing for the organization of the police department of the city, in conformity with the statute governing that matter, has, when duly passed, the force and effect of a statute. *State v. Duncan*, 49 Mont. 54, 140 Pac. 95.

In determining whether the mayor of a city is in contempt of court in failing to reinstate policemen unlawfully ousted by him, and when the court has directed him to reinstate, the sole question is whether the mayor has fully complied with the original mandate of the court; the question of fact whether the action of the mayor, in complying with the order, and soon afterward retiring the men, was not a mere subterfuge to evade the law and avoid actual compliance with the order of the court might properly be considered, if raised by the pleadings; but neither that nor other questions can be considered, in such a proceeding, unless put in issue. *State v. District Court*, 41 Mont. 532, 538, 110 Pac. 538.

If the mayor puts members of the police department out of active service, but afterward complies with an order of court to reinstate them, and, after they have served a short time, again retires them, he is not in contempt of court. *State v. District Court*, 41 Mont. 532, 534, 538, 110 Pac. 86.

§ 3306.

Construction of statute. See note ante, § 3304.

Statute of limitations in mandamus. See note post, § 6451.

Special proceeding of a civil nature. See note post, § 6476.

Repeal because of inconsistency. See notes ante, §§ 3216 and 3250.

A policeman, discharged contrary to the provisions of the metropolitan police law, sections 3304-3312, is not guilty of laches in delaying, for thirteen months, to take any action by mandamus for his reinstatement, where he is awaiting the final decision of law questions in a similar, pending proceeding. *State v. Duncan*, 47 Mont. 447, 452, 133 Pac. 109.

It is obligatory upon the mayor of a city to appoint to permanent service on the police force a policeman, who, after service for the probationary term of six months, has demonstrated his fitness for the position. *State v. Duncan*, 47 Mont. 447, 455, 133 Pac. 109.

§ 3307.

Construction of statute. See note ante, § 3304.

Repeal because of inconsistency. See notes ante, §§ 3216 and 3250.

As to cities and towns of the first class, the law relative to an examining board is mandatory; as to other cities and towns, it is simply permissive. *State v. Mayor of Butte*, 41 Mont. 377, 382, 109 Pac. 710.

The law, in effect, commands that there shall be an examining and trial board of the police department; the law creates the office; hence, the contention that there is no such office until the mayor has nominated its members and the council confirmed them is without merit. *State v. Mayor of Butte*, 41 Mont. 377, 383, 109 Pac. 710.

Where persons, appointed by the mayor of a city of the first class as members of the examining and trial board of the police department, qualified, they became de facto officers, whose official acts were legal, notwithstanding the city council repeatedly refused to confirm them. *State v. Mayor of Butte*, 41 Mont. 377, 385, 109 Pac. 710.

The office of member of the examining and trial board of the police department of a city of the first class, having been newly created by the act of 1907, it became ipso facto vacant in its creation, and it was the duty of the mayor of such a city, within a reasonable time after the vacancies occurred, to nominate three qualified citizens to fill the offices. *State v. Mayor of Butte*, 41 Mont. 377, 384, 109 Pac. 710.

§ 3308.

Construction of statute. See note ante, § 3304.

Repeal because of inconsistency. See notes ante, §§ 3216 and 3250.

By this section, the power to impose punishment upon a policeman for a neg-

lect or violation of his duty is lodged in the mayor, and a court cannot substitute its judgment for his. *Bailey v. Examining and Trial Board*, 45 Mont. 197, 203, 122 Pac. 572.

The provision restricting the power of removal found in this section, refers to removals for lapse of duty and the like; there is no restriction upon the power of the council to abolish as many of the places or offices once provided for, as it chooses, by reducing the number of the members on the force. *State v. Edwards*, 40 Mont. 287, 304, 20 Ann. Cas. 239, 106 Pac. 695.

Policeman as an officer. See *State v. Edwards*, 40 Mont. 287, 301, 20 Ann. Cas. 239, 106 Pac. 695.

A probationer, being a member of the police force, can be removed only upon charges made and trial had in conformity with this section and section 3309, post. *State v. Duncan*, 47 Mont. 447, 454, 133 Pac. 109.

A police captain is a "policeman," and, upon appointment, after having served the probationary term of six months, he is secure from removal from office except as provided in the act of 1907; that act makes no distinction between officers or members of different rank relative to their duties as policemen, and requires all to be selected and appointed in the same manner. *State v. Edwards*, 40 Mont. 313, 317, 106 Pac. 703.

An ordinance intended, not to abolish the offices of members of the police force for economical reasons, but to get them off the force permanently in order to make way for the mayor to fill their places with persons more acceptable to him, is void, and does not confer upon the mayor the power to make appointments to the vacant places; a discharge of one member of the police force, manifestly for the purpose of making place for another person, is unlawful under a statute having a civil service feature. *State v. Edwards*, 40 Mont. 287, 306, 309, 20 Ann. Cas. 239, 106 Pac. 695.

If a civil service statute provides for a tenure of office of the police force during good behavior, and prohibits removals except for the causes and in the manner mentioned, the city council or the person or body in whom is vested the power to reduce the police force, must, when it does reduce it, unless it is otherwise provided by statute, regard those put out of active service as still upon the eligible list and entitled to be returned to active service whenever vacancies occur or the exigencies of the service demand it; otherwise, the offices may be abolished for purely personal or political reasons. *State v. Edwards*, 40 Mont. 287, 305, 20 Ann. Cas. 239, 106 Pac. 695.

The decision of the examining and trial board on questions of fact is final and conclusive on all courts, if there is any substantial evidence to support it; but whether or not there is such evidence is a question for the district court to decide. *Bailey v. Examining and Trial Board*, 42 Mont. 216, 218, 112 Pac. 69.

No question of fact can arise after the examining and trial board has made its findings; but the district court has jurisdiction to determine every question of law necessary to insure to the accused officer the right guaranteed to him; namely, that all essential requirements of law shall be complied with before he is discharged from the police department. *Bailey v. Examining and Trial Board*, 42 Mont. 216, 218, 112 Pac. 69.

A decision of the examining and trial board, on questions of fact, is final and conclusive on all courts, if there is any substantial evidence to support it. *Bailey v. Examining and Trial Board*, 45 Mont. 197, 202, 122 Pac. 572.

In the absence of restrictions contained in a civil service statute, a city having the power to create an office has also the implied power to abolish it; and, when the condition of the finances of the city requires it, an office may be dispensed with even though it is controlled by the civil service statute; but, if there is an eligible list from which appointments must be made, those who are put out of active service are relegated to this list, with the right to be returned to duty when the exigencies of the service require it. *State v. Edwards*, 40 Mont. 287, 306, 20 Ann. Cas. 239, 106 Pac. 695.

Before an officer can be discharged from the police department, there must be a substantial charge against him, with substantial evidence to sustain it. *Bailey v. Examining and Trial Board*, 42 Mont. 216, 218, 112 Pac. 69.

It is contemplated that reduction in rank or grade may be imposed as a punishment in case the officer, other than the chief, is found guilty. *State v. Duncan*, 49 Mont. 54, 140 Pac. 95.

Under article VIII, section 2, of the Constitution, the supreme court has a general supervisory control over all inferior courts; but an officer who has been discharged from the police department cannot obtain a review of the proceedings in the supreme court, on an original application for a writ of supervisory control, on the grounds that the charges filed against him did not state sufficient facts to constitute a cause of action, and that the evidence was not sufficient to support the findings; these are questions of law that could and should have been considered in the district court. *Bailey v. Examining and Trial Board*, 42 Mont. 216, 217, 112 Pac. 216.

§ 3309.

Removal of probationer. See note ante, § 3308.

Repeal because of inconsistency. See notes ante, §§ 3216 and 3250.

A charge, under this section, is sufficient, if it is in writing and, in substance, makes out any one of the triable offenses mentioned. *Bailey v. Examining and Trial Board*, 45 Mont. 197, 199, 122 Pac. 572.

It is contemplated that charges against any officer in the department shall be heard by the examining and trial board. *State v. Duncan*, 49 Mont. 54, 140 Pac. 95.

Instances of police officer's misconduct in office and neglect of duty, respecting obstructions on the sidewalk and injuries therefrom. *Bailey v. Examining and Trial Board*, 45 Mont. 197, 199, 122 Pac. 572.

§ 3310.

Repeal because of inconsistency. See notes ante, §§ 3216 and 3250.

The civil service principle is the foundation of the metropolitan police law; and the fundamental idea of that principle is, that appointments to, and promotions in, the police department shall depend upon merit and not upon favoritism. *State v. Duncan*, 49 Mont. 54, 140 Pac. 95.

The office of chief of police is required to be maintained; but the subordinate officers need not be; they are created to meet the needs of the city, and a captain, lieutenant, or sergeant may be retired from active service, when the necessities of the case require it, but not simply for some one else to take his office. *State v. Duncan*, 49 Mont. 54, 140 Pac. 95.

If considerations of economy have caused the office of lieutenant of police to be vacated, by the retirement of the incumbent to the waiting list, the spirit of the law demands that, whenever that

office is again filled, the former incumbent shall be restored, in preference to anyone else. *State v. Duncan*, 49 Mont. 54, 140 Pac. 95.

The retirement of a lieutenant of police, to the eligible list, followed immediately by the appointment of another to fill the office, is a clear violation of the civil service principle, and does not deprive the lieutenant of his office. *State v. Duncan*, 49 Mont. 54, 140 Pac. 95.

Where policemen have been illegally ousted from office, and the mayor has been directed, by a writ of mandate, to reinstate them, his action in instructing the chief of police, while there are available men on the eligible list, to include two special policemen among those who are to be regularly employed, and in the place of two of the eligibles, is a contempt of court; the employment of the two specials would consume the funds to the exclusion of two others, recognized by the courts as being entitled to the two places. *State v. District Court*, 41 Mont. 369, 373, 109 Pac. 434.

§ 3312.

See note ante, § 3304.

Repeal because of inconsistency. See notes ante, §§ 3216 and 3250.

§ 3314.

Provisions for different grades and offices. See note ante, § 3304.

§ 3317.

Repeal because of inconsistency. See notes ante, §§ 3216 and 3250.

The saving clause of this section serves no purpose other than to indicate that the legislature did not intend to repeal any existing law or ordinance of any city not inconsistent with the law enacted. *State v. Quinn*, 40 Mont. 472. 480, 107 Pac. 506.

MUNICIPAL PARKS.**§ 3318. Park Commissioners — Appointment and Organization—Records and Reports.**

That there is hereby created in all cities of the first and second class, a board of park commissioners, which shall be composed of the mayor of the city and six other persons to be appointed by the Governor of the state. The six persons so to be appointed shall have the same qualifications for the office of park commissioners as are required by section 3225 (4749) of the Revised Codes of the state of Montana of 1907, for the office of mayor. The term of office of each park commissioner shall be two years from and after the first day of May of the year in which he is appointed and until his successor is appointed and qualified, save and except that three of the commissioners first appointed shall hold office for the period of one year from and after the first day of May, 1901, and until their successors are appointed and qualified. Such board of park commissioners shall constitute a department of the city government with the powers in this act pro-

vided. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe the oath provided by section 362 (1010) of the Revised Codes of Montana of 1907, which oath shall be filed in the office of the city clerk.

On the first Monday in May in each year, said board of park commissioners shall meet and organize by electing one of their number president and one of their number vice-president, who shall hold their office respectively for the term of one year. The president, and in his absence, the vice-president, shall preside at all meetings of the board, and shall countersign all warrants issued by the board, and perform such other duties as shall be required and directed by the board. The city clerk shall be ex-officio clerk of the board of park commissioners and shall attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called "Record of Board of Park Commissioners of the city of" It shall be the duty of the city clerk, as such clerk of the board of park commissioners, to keep an accurate account of all transactions of said board separate from other city accounts, and to make and submit in writing to said board at their first meeting in January in each year, a report under oath showing in detail all of the receipts and disbursements made by the board during the year, which report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the city clerk and one in the office of the city treasurer, and he shall perform such other services as the board shall require. In the absence of the clerk at any meeting held by the board, it shall designate one of its number as clerk pro tem. to keep the minutes of said meeting, which minutes shall be delivered to the clerk to be transcribed into the record-book of said board. The minutes of said meeting in said record-book contained when approved by the board, shall be prima facie evidence of the matters and things therein recited in any court of this state. [Amendment approved March 15, 1913; Laws 1913, p. 437.]

See also, § 3464a, post.

Policy of state concerning local self-government, indicated by the adoption of the initiative and referendum as applied to municipal legislation. See ante, §§ 3266-3276.

This act, creating a board of park commissioners and giving it certain powers, sections 3318-3324, is unconstitutional; it violates the theory of local self-government; furthermore, such a board is not one of the "corporate authorities" of a city, within the meaning of the Constitution, in which the legislative assembly may vest power to assess and collect taxes for "municipal purposes." State v. Edwards, 42 Mont. 135, 152, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078, 111 Pac. 734.

It is the public policy of this state to confide to the citizens of municipalities the right of local self-control to the utmost extent compatible with an orderly system of state government. State v. Edwards, 42 Mont. 135, 148, Ann. Cas.

1912A, 1063, 32 L. R. A. (N. S.) 1078, 111 Pac. 734.

A city or town has certain public duties which it may be compelled to perform; but it has certain private obligations and offices that the legislature cannot interfere with. State v. Edwards, 42 Mont. 135, 148, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078, 111 Pac. 734.

Editorial Notes.

Authority of state to regulate or control public parks of municipalities. Ann. Cas. 1912A, 1069.

To what boards or bodies may the power of taxation be delegated. 32 L. R. A. (N. S.) 1078.

§ 3319.

Unconstitutionality of act. See note ante, § 3318.

§ 3322.

Unconstitutionality of act. See note ante, § 3318.

§ 3326.

A fireman, who has been discharged in violation of the act placing paid fire

departments under civil service rules, may be reinstated by mandamus. *State v. City of Anaconda*, 41 Mont. 577, 581, 111 Pac. 345.

MUNICIPAL FIRE DEPARTMENT.**§ 3327. Fire Department to Consist of What—Compensation.**

Such fire department, when established, may consist of: One chief of the fire department, as many assistant chiefs of the fire department, and such number of firemen as the council may from time to time provide, and may also include a city electrician, and as many assistant electricians as the council may from time to time provide. The compensation of the chief of the fire department and assistant chiefs of the fire department and firemen in cities and towns where the council shall establish a paid fire department, and said city electrician and assistant city electricians, shall be fixed by ordinance. The mayor shall nominate and with the consent of the council appoint the chief of the fire department, the assistant chief or chiefs of the fire department, and all firemen, and such appointment shall be first made for a probationary term of six months, and thereafter the mayor may nominate and with the consent of the council appoint such chief and assistant chief or chiefs of the fire department and firemen who shall thereafter hold their appointment during good behavior, and while they have the physical ability to perform their duties. The chief of the fire department and the firemen shall not be deemed officers of the municipal corporation in which such fire department is established. [Amendment approved February 23, 1911; Laws 1911, p. 79.]

Section 3220, ante, has no application to a fireman; he is not a municipal officer. *State v. City of Anaconda*, 41 Mont. 577, 581, 111 Pac. 345.

§ 3328.

What is no excuse for violation of section. See note ante, § 3287.

This section is a disciplinary measure; it provides for the removal of a fireman for cause; but, as a condition precedent to such removal, charges in writing must be preferred to the council, a hearing had, and the accused found guilty; and, if a fireman has been removed without written charges, his action, after his discharge, in asking for a reinstatement, is not a waiver of his right to have written charges preferred; there is no waiver of a right that has been lost. *State v. City of Anaconda*, 41 Mont. 577, 582, 111 Pac. 345.

§ 3329.

What is no excuse for violation of section. See note ante, § 3287.

If the city council deems it necessary to reduce the number of paid firemen, it must retire the one last appointed; it cannot exercise any discretion in the premises and discharge the one thought least efficient, even though oldest in point of service. *State v. City of Anaconda*, 41 Mont. 577, 584, 111 Pac. 345.

§ 3330.

Where a discharged fireman seeks reinstatement, an allegation that he had been duly appointed and confirmed as a member of the fire department, and that at all times he has had the physical ability to perform his duties as such, is a sufficient allegation that he possesses the qualifications of a fireman; it is presumed that official duty was regularly performed, and the fair inference is that the applicant possesses the necessary qualifications; otherwise, he would not have been appointed in the first instance. *State v. City of Anaconda*, 41 Mont. 577, 581, 111 Pac. 345.

§ 3341a. Annual Report of Clerks of Cities Having Fire Department.

(Section 1.) On or before October 31st, annually, the clerk of every city having an organized fire department, or a partly paid or volunteer department, shall file with the commissioner of insurance of this state, his certificate stating such fact, the system of water supply in use in such fire department, the number of its organized companies, steam, hand or

other engines, hook-and-ladder trucks, hose-carts and feet of hose in actual use, and such other facts as the commissioner may require. [Approved March 8, 1911; Laws 1911, c. 129, p. 353.]

§ 3341b. Reports of Insurance Companies.

(Section 2.) The commissioner of insurance shall include in the blank form furnished to each fire insurance company for its annual statement, a list of all such cities, and each company shall report therein, the amount of premiums received by it, during the preceding year in each incorporated city. Before July 1st following said October 31st, mentioned in section 1 of this act, the commissioner of insurance shall certify to the state auditor the name of each city which has had, for not less than one year, an organized fire department, and which has been so reported to him, and the amount of premiums received in each city in such year by each fire insurance company. [Approved March 8, 1911; Laws 1911, c. 129, p. 353.]

§ 3341c. State Auditor to Pay Cities Fifty Per Cent of Licenses Collected.

(Section 3.) At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city his warrant for an amount equal to fifty per cent (50) of the licenses collected by the state auditor under section 4017 of the Revised Codes of the state of Montana, in proportion to the premium so paid, and collected by the said fire insurance companies, in such cities to the total premiums, paid and collected by such fire insurance companies in the entire state. [Amendment approved March 1, 1915; Laws 1915, p. 72.]

§ 3341d. State Treasurer to Pay Warrants.

(Section 4.) The state treasurer is hereby authorized and directed to and upon the presentation to him of the said warrant of the state auditor to pay to the treasurer of any such city, out of the general revenue fund of this state, the amount in such warrant specified which amount shall be paid into the disability fund of the fire department. [Approved March 8, 1911; Laws 1911, c. 129, p. 354.]

§ 3341e. Fire Department Relief Association.

(Section 5.) The members of the fire department or departments in each incorporated city in this state are hereby authorized to form themselves into an association to be known as the fire department relief association of the city of (naming the city); provided, that no such association shall be formed, unless a majority of the members of the city council in which the same is organized shall consent thereto. In the event of the formation of such fire department relief association, there shall be selected as officer of same by the members thereof the following named officers, to wit: A president, secretary and treasurer and such other officers as may be considered necessary. [Approved March 8, 1911; Laws 1911, c. 129, p. 354.]

§ 3341f. Report of Secretary and Treasurer of Association—Examination of Books and Accounts.

(Section 6.) The secretary and treasurer of every such association so formed, shall, annually, prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purpose

the money has been paid and expended, and file it with the city clerk, and a duplicate with the state auditor. No money shall be paid to the treasurer of the city until such report is so filed. No one serving as a substitute or on probation, nor any fireman in the city having such association who is not a member thereof, shall be deemed a fireman within the meaning of this act. No treasurer of any such association shall enter upon his duties until he shall have given to the association a good and sufficient bond for the faithful discharge of his duties according to law, the amount of such bond to be fixed by said association. All the financial books and accounts of such association and city with reference thereto shall be subject at all times to examination by the state examiner, and he is hereby authorized and empowered to make such examination when complaint is duly made to him, that the money or any part thereof, paid under the provisions of this act to the treasurer of any city, or such association, has been, or is being expended for an unauthorized purpose, and if such money upon examination is found to have been expended, contrary to the authority given, he shall so report to the Governor, upon whose direction to the state auditor no further warrants shall be issued to such city treasurer until the money so expend— has been restored. [Approved March 8, 1911; Laws 1911, c. 129, p. 354.]

§ 3341g. Duties of Association and City Treasurers.

(Section 7.) Whenever such fire department relief association is formed as herein provided for, and when the treasurer of such association has furnished the bond herein provided for, such treasurer shall receive all money in the hands of the city treasurer to the credit of said disability fund, giving to said city treasurer his receipt for same, and said city treasurer shall thereafter from time to time, as moneys are received by him for the credit of said fund, turn the same over to the treasurer of said relief association taking proper receipts therefor. [Approved March 8, 1911; Laws 1911, c. 129, p. 355.]

§ 3341h. Pensions to Retired Firemen.

(Section 8.) Every fire department relief association whenever its certificate of incorporation or by-laws so provide, and every board of trustees where no fire department relief association exists, may pay out of any moneys in the disability fund a service pension in an amount not exceeding one-half of the monthly salary last received by such pensioner as may be provided for, to each of its members who have heretofore retired or may hereafter retire, or has reached or shall hereafter reach the age of fifty years, or who has done or hereafter shall do active duty for eighteen years or more as a member of a volunteer, paid or partially paid and partially volunteer fire department in the municipality where such association exists, or who has been or who shall hereafter be a member of such fire department relief association at least ten years prior to such retirement, or who under the by-laws of the board of trustees may be entitled to such pension. Such pension shall be uniform in amount, and may be decreased or increased within the amount above specified, whenever the amount of funds on hand render such act advisable. No such pension shall be paid to any person while he remains a member of the fire department, and any person receiving such pension shall not be entitled to other relief from such association. [Approved March 8, 1911; Laws 1911, c. 129, p. 355.]

§ 3341i. Service Pensions for Disabled Members.

(Section 9.) Every firemen's relief association now or hereafter organized in any city in this state, having an organized fire department, which is now incorporated, or which may be hereafter incorporated and every board of trustees may pay out from any funds it may have heretofore received, or which it may hereafter receive, service pensions in such amounts and in such manner as its by-laws shall designate, not exceeding, however, one-half the sum last received as a monthly salary by such pensioned members monthly; provided, however, that such pension shall only be paid to such members as are permanently disabled, and if such disability is removed then such pension hereunder shall cease. [Approved March 8, 1911; Laws 1911, c. 129, p. 356.]

§ 3341j. Pensions to Widows and Orphans.

(Section 10.) Such firemen's relief association and such board of trustees may pay a pension to such of the widow and orphans of deceased firemen in such sums and under such limitations and conditions as its by-laws shall provide and permit, not exceeding however, a sum equal to the monthly salary last received by such deceased fireman, monthly to any such pensioner or to any one family, with the right to increase or decrease the amount of any such pension, when the funds on hand, or lack of funds on hand, or other good reasons, such reduction or increase seems advisable and proper. [Approved March 8, 1911; Laws 1911, c. 129, p. 356.]

§ 3341k. Revenue to be Set Aside as Special Fund.

(Section 11.) The amount so paid to any city treasurer, or to the treasurer of such firemen's relief association, under the provisions of this act shall be set aside as a special fund and may be appropriated and disbursed in the same manner as other funds belonging to said city or association are appropriated or disbursed, but only for the following purposes, namely:

(1.) For the use of sick, injured or disabled firemen of any fire department of said city, and their widows and orphans.

(2.) For the payment of pensions, pursuant to the provisions of sections 8 and 9 of this act.

Any money remaining in said fund unexpended may be invested by said association or by said trustees as provided for by law. [Approved March 8, 1911; Laws 1911, c. 129, p. 356.]

§ 3341l. Pensions Exempt and Nonassignable.

(Section 12.) Any payments made or to be made hereunder shall not be subject to judgments, garnishment, execution, or other legal process, and any person entitled to such pension shall not have the right to assign the same, nor shall the association or trustees have the authority to recognize any assignment or pay over any sum so assigned. [Approved March 8, 1911; Laws 1911, c. 129, p. 357.]

§ 3341m. Source and Control of Funds.

(Section 13.) Such association and such board of trustees shall have full charge, management and control of such funds hereinafter provided for, which said funds shall be derived from the following sources:

1. From interest, rents, gifts, or money from other sources.

2. From funds received from the state of Montana.
3. From money raised by taxation under section 3336 of the Revised Codes of the state of Montana. [Approved March 8, 1911; Laws 1911, c. 129, p. 357.]

MUNICIPAL TAXATION.

§ 3342. Amount of Tax for Municipal Purposes—Distribution of Funds.

The amount of taxes to be assessed and levied for general municipal or administrative purposes, must not exceed one per centum on the assessed value of taxable property of the city or town, and the council may distribute the money collected into such funds as are prescribed by ordinance, provided that for the purpose of maintaining public parks, the council may assess and levy in addition to said one per centum, not exceeding two mills on the dollar, on the assessed value of the taxable property of the city or town. [Amendment approved March 6, 1911; Laws 1911, p. 180.]

§ 3350a. County Assessor to Furnish Copies of Assessment-books to Cities and Towns.

On or before the second Monday in July of each year, the assessor must furnish to all cities of the third class and towns within his county, as shall make written request for the same on or before the first Monday in April of each year, a complete certified copy of his assessment-book so far as such assessment-book pertains to property within the limits of said cities and towns. The assessor may charge such cities and towns five cents per folio of one hundred words for each copy of his assessment-book furnished such cities and towns as provided in the preceding section. [Approved March 2, 1911; Laws 1911, c. 69, p. 132.]

PUBLIC IMPROVEMENTS—ASSESSMENTS.

§ 3367. Special Improvements—Powers of City Council.

(Section 1.) All streets, alleys, places or courts, in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, alleys, places or courts, for the purpose of this act, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, alleys, places or courts, and fix the width thereof, and is hereby invested with jurisdiction to acquire private property for right of way and to order to be done any of the work mentioned in this act under the proceedings hereinafter described. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 394.]

Editorial Notes.

Liability for injury from grading or regrading streets. 43 Am. Dec. 723.

The whole theory of local taxation or assessments is that the improvements for which they are levied afford a remuneration in the way of benefits. *Power v. City of Helena*, 43 Mont. 336, 341, 36 L. R. A. (N. S.) 39, 116 Pac. 415.

The opportunity presented for individual use determines the question of special benefit; a lot derives a "special benefit" from the construction of a sewer, when the sewer is so situated and constructed that connection can be had therewith. *Power v. City of Helena*, 43 Mont.

336, 341, 36 L. R. A. (N. S.) 39, 116 Pac. 415.

If a city levies an assessment for a storm sewer, and a property owner fails to appear before the council and make any objections, he cannot, after the expense has been incurred and the improvement made, invoke the aid of a court of equity, in the first instance, to relieve him from the assessment upon the ground that his property is so situated that it is impossible for it to obtain any benefit from the improvement; the doctrine of estoppel in pais is applicable. *Power v. City of Helena*, 43 Mont. 336, 342, 36 L. R. A. (N. S.) 39, 116 Pac. 415.

If a city levies an assessment for the construction of a storm sewer, and a

property owner asks a court of equity to relieve him from the payment of the tax, on the ground that his property can receive no benefit, his complaint must show that he appeared, at the time and place designated in the resolution of the council for hearing objections; that he made objections thereto; and that his protest was ignored; otherwise, he is estopped. *Power v. City of Helena*, 43 Mont. 336, 343, 36 L. R. A. (N. S.) 39, 116 Pac. 415.

It is an "improvement," within the purview of this section and of section 3369, ante, to open and widen a street and to acquire property for that purpose, as authorized by the sixth and seventy-fifth subdivisions of section 3259, ante; hence, to render valid a special assessment upon property benefited by such improvement, there must have been a compliance with the statute relative to resolution of intention and notice of intention. *Kohn v. City of Missoula*, 50 Mont. 75, 144 Pac. 1087.

If an improvement district for street improvement contains federal property on one side of a street, such property is exempt from special assessment; but, in such a case, where it is necessary, the city has power to devote the street fund, or any money in the city treasury not set apart for some other purpose, toward paying the expense of paving in front of such property. *Ford v. City of Great Falls*, 46 Mont. 292, 308, 127 Pac. 1004.

Notwithstanding the unqualified language of this section, as including all abutting property, the legislature has no power to impose a tax of any character upon any property or instrumentality of the federal government; and this immunity includes special assessments. *Ford v. City of Great Falls*, 46 Mont. 292, 307, 127 Pac. 1004.

Where streets are to be improved, the fact that property, exempt from special assessment, lies on one side of one of the streets is no obstacle to the city's proceeding with the improvement of that street. *Ford v. City of Great Falls*, 46 Mont. 292, 307, 127 Pac. 1004.

The general words of a statute are to be so construed as to bring the statute into harmony with controlling statutory or constitutional provisions, rather than to attach to them a meaning which assumes that the legislative assembly intended to usurp a power specifically denied to it by the Constitution of the United States. *State v. Alderson*, 49 Mont. 29, 38, 140 Pac. 82.

With respect to special improvements, the "superficial area" rule is the rule of this state; it amounts to a legislative declaration that all property in a proposed district is, presumptively, equally

benefited by the improvement contemplated. *Mansur v. City of Polson*, 45 Mont. 585, 595, 125 Pac. 1002.

The application of the "superficial area" rule may work a hardship in particular cases, but some scheme of assessment must necessarily be enforced to pay for special improvements; and assessment proceedings for street improvements will not be held void though the city council has included side streets in the special improvement district, thus forcing the owner of an inside lot to bear the same proportion of expense for improvements on side streets adjacent to a corner lot of the same area, already more valuable, as would the owner of the corner lot; and though the benefits to the inside lot owner are disproportionate to those to accrue to the owners of corner lots. *Mansur v. City of Polson*, 45 Mont. 585, 595, 125 Pac. 1002.

A city council does not acquire jurisdiction to levy special assessments to defray the cost of constructing a district sewer, where it entirely ignores special provisions of the statute as to that matter. In case of repugnancy, the special statute will prevail over the general statute. *Stadler v. City of Helena*, 46 Mont. 128, 135, 127 Pac. 454.

The property of a school district, devoted exclusively to public school purposes, is liable for the payment of assessments made for special municipal improvements. *City of Kalispell v. School District*, 45 Mont. 221, 230, Ann. Cas. 1913D, 1101, 122 Pac. 742.

"Public places," at the end of this section, include streets and alleys, but not property belonging to a school district and devoted to public school purposes. *City of Kalispell v. School District*, 45 Mont. 221, 230, Ann. Cas. 1913D, 1101, 122 Pac. 742.

Sections 3367-3417 are to be considered as a single legislative act, the evident purpose of which was to provide a detailed plan for public improvements the cost of which might be borne or shared by property owners; sections 3379 and 3380 must therefore be regarded as having some reference to the plan so devised and to the methods of inauguration set forth in sections 3369 and 3370. *Kohn v. City of Missoula*, 50 Mont. 75, 144 Pac. 1087.

Editorial Notes.

Estoppel to attack assessment for special benefits upon the ground that the property is not benefited. 36 L. R. A. (N. S.) 39.

Liability of school property to special assessment. Ann. Cas. 1913D, 1103.

Assessments, power of municipal corporations to levy. 55 Am. Dec. 285.

Assessments and taxes, purposes for which municipal corporations may levy. 16 Am. St. Rep. 365.

Assessment for local improvements, public property, whether subject to. 33 Am. St. Rep. 400.

Right to impose on abutting owners expense of sprinkling or cleaning streets or sidewalks. 24 L. R. A. 412.

§ 3369. Special Improvement Districts—Placing Wires Under Ground.

(Section 2.) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to create special improvement districts, and order the whole, or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, surfaced or resurfaced, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, cross-walks, culverts, bridges, gutters, curbs, steps, parkings, including the planting of grass plots and setting out trees; sewers, ditches, drains, conduits and channels for sanitary and drainage purposes, or either or both thereof, with outlets, cesspools, manholes, catch-basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances; pipes, hydrants, hose connections for irrigating; appliances for fire protection; tunnels, viaducts, conduits, and subways; breakwaters, levees, retaining walls, bulkheads and walls of rock or other material to protect the same from overflow or injury by water; the opening of streets, avenues and alleys; the planting of trees thereon; and to maintain, preserve and care for any and all of the improvements herein mentioned; and the construction or reconstruction in, over, or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes, or either or both thereof, with necessary outlets, cesspools, manholes, catch-basins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels and other appurtenances; pipes, hose connections for irrigating, hydrants and appliances for fire protection; and breakwaters, levees, retaining walls and bulkheads; walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways and other property in any such city from overflow by water; and to order any work to be done which shall be deemed necessary to improve the whole, or any portion of such streets, avenues, sidewalks, alleys or places, or public ways, or property, or right of way of such city. The city council is also hereby authorized to create a district as hereinafter specified for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening or extending any street, avenue or alley within the corporate limits of such city.

It is further provided that the council shall have the same jurisdiction and powers as is in this section above provided, to (before doing any of the work mentioned in this act) require any public service corporation, or company, firm or person occupying such streets, avenues or alleys, at their own expense and within a reasonable time to be fixed by the council, place in an underground conduit in such manner as may be directed by the city council, all wires, electric conduits, telephone, telegraph, power or power transmission lines, or appurtenances thereto, or appliances owned, held or enjoyed in connection therewith. [Amendment approved March 9, 1915; Laws 1915, c. 142, p. 341. Prior amendment: Laws 1913, c. 89, p. 394.]

The language of this section is permissive, not mandatory, except as to the provisions for notice and a hearing. *Ford v. City of Great Falls*, 46 Mont. 292, 303, 127 Pac. 1004.

The council is the governing body of the municipality, and it is given the exclusive control of streets and highways therein. *Ford v. City of Great Falls*, 46 Mont. 292, 305, 127 Pac. 1004.

The council of a municipality may let all street work by contract; or, do the same itself, through a committee, board, or designated officer; or, it may pursue any other plan that best meets the exigencies of a particular case. *Ford v. City of Great Falls*, 46 Mont. 292, 306, 127 Pac. 1004.

§ 3370. Resolution of Intentions—Notice—Materials.

(Section 3.) Before creating any special improvement district, for the purpose of making any of the improvements, or acquiring any private property for any purpose authorized by this act, the city council shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements which are to be made, and an approximate estimate of the cost thereof; provided, however, that any improvement to be made in paving, the city or town council may in describing the general character of the same, describe several kinds of paving. Upon having passed such resolution, the council must give notice of the passage of such resolution of intention, which notice must be published for five (5) days in a daily newspaper; or in some one issue of a weekly paper published in the city or town, or in case no newspaper be published in such city, then by posting for five (5) days in three (3) public places in the city or town, and a copy of such notice shall be mailed to every person, firm, or corporation, or the agent of such person, firm, or corporation having property within the proposed district at his last known address, upon the same day, such notice is first published or posted. Such notice must describe the general character of the improvement or the improvements so proposed to be made, and state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements, or the creation of such district; and said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this act, and any number of streets and rights of way, or portions thereof, and it may except therefrom any of said work, already done, upon a street to the official grade.

Where the special improvement contemplated is the paving of a street, in which car tracks have been constructed, the city shall have the power and authority to order the general character of the material between the rails and one foot on each side of the rails to be of a different kind from that used in the remainder of the street; providing, that, the general character of the material to be used between the car tracks and one foot on each side of the rails, be described, in the resolution of intention, in the same manner as the general character of the material used for the rest of the contemplated pavement.

The lots or portions of lots fronting upon said excepted work, already done, shall not be included in the assessment for the class of work from which the exception is made; provided that this shall not be construed so as to affect the special provisions as to grading contained in subdivision 3

of section 15 of this act. [Amendment approved March 9, 1915; Laws 1915, c. 142, p. 343. Prior amendment: Laws 1913, c. 89, p. 395.]

§ 3371. Charge of Cost of Improvement upon Extended District not Fronting on Street Improved.

(Section 4.) Whenever the contemplated work or improvement in the opinion of the city council is of more than local or ordinary public benefit, or whenever, according to estimates furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half the total assessed value of the lots and lands assessed, if assessed upon the lots or lands fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment-roll whereon it was assessed for taxes for municipal purposes, the city council may make the expense of such work or improvement chargeable upon an extended district and which may include other lots not fronting on the improvement and which the said city council shall, in its resolution of intention, declare to be the district benefited by said work or improvements and to be assessed to pay the costs and expenses thereof. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 396.]

§ 3372. Protests Against Proposed Work.

(Section 5.) At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of the property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both. Such protest must be in writing, and be delivered to the said clerk of the city council, who shall indorse thereon the date of its receipt by him. At the next regular meeting of the city council, after the expiration of the time within which said protest may be so made the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work, and the cost thereof is to be assessed upon the property fronting thereon, and the city council finds that such protest is made by the owners of a majority of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city council finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said protest was received by the said clerk of the city council; except in case the improvements are the construction of sanitary sewers, when the said protest may be overruled by an affirmative vote of a majority of the members of the city council.

In determining whether or not sufficient protests have been filed in a proposed district, to prevent further proceedings therein, property owned by a county, city or town shall be considered the same as other property in the district. The city council may adjourn said hearing from time to time. [Amendment approved March 9, 1915; Laws 1915, c. 142, p. 343. Prior amendment: Laws 1913, c. 89, p. 397.]

§ 3373. Jurisdiction to Order Proposed Improvements.

(Section 6.) When no protests have been delivered to the clerk of the city council within fifteen days after the date of the first publication of the

notice of the passing of the resolution of intention, or when a protest shall have been found by said city council to be insufficient, or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. But before ordering any of said proposed improvements the city council shall pass a resolution creating the said special improvement district in accordance with the resolution of intention theretofore introduced and passed by the city council. [Amendment approved March 9, 1915; Laws 1915, c. 142, p. 344. Prior amendment: Laws 1913, c. 89, p. 397.]

§ 3374. Sufficiency of Description After Resolution of Intention.

(Section 7.) In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the assessment district or both and to refer to the resolution of intention for further particulars. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 397.]

§ 3375. Bids for Work and Award of Contract.

(Section 8.) Notice inviting proposals, and referring to the specifications on file, shall be published at least twice in a daily, semi-weekly, or weekly newspaper, published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall be posted in at least three public places.

The city council may call for bids or proposals for several kinds and types of materials for any improvements proposed to be made under Chapter 89 of the Acts of the Thirteenth Legislative Assembly of the state of Montana, reserving the right to select the kind or type of material to be used in making any such improvements, after the bids or proposals therefor shall have been opened, examined and declared.

The time fixed for the opening of bids shall be not less than ten days from the time of the final publication of said notice. All proposals, or bids offered shall be accompanied by a check payable to the city, certified by a responsible bank for an amount which shall not be less than ten per cent (10%) of the aggregate of the proposal. Said proposals or bids shall be delivered to the clerk of the said city council, and said city council shall, in open session, publicly open, examine and declare the same, provided, however, that no proposal or bids shall be considered unless accompanied by said check. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid.

If the bids are rejected or no bids are received, the city council may within six months thereafter readvertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner in this section provided and shall thereupon return to the proper parties the checks corresponding to the bids so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for

doing said work, as hereinafter provided, has been entered into, either by said lowest bidder, or by the owners of over fifty per cent of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects or refuses to enter into the contract to perform said work or improvements, as hereinafter provided, then the certified check accompanying his bid, and the amount therein mentioned shall be declared to be forfeited to said city, and shall be collected by it, and paid into the general fund. [Amendment approved March 9, 1915; Laws 1915, c. 142, p. 344. Prior amendment: Laws 1913, c. 89, p. 398.]

§ 3376. Contract by Owner to Do Work.

(Section 9.) The owners of three-fourths of the frontage of lots and lands liable to be assessed, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within three days after the said award, elect to take such work and enter into a written contract to do the whole work at a price at least five per cent less than the price at which the same has been awarded, and all work done under such contract shall be subject to the same plans and specifications governing the lowest responsible bidder. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within three days, or to commence the work within fifteen days after the date of such written contract, and to prosecute the same with diligence to completion, it shall be the duty of the city council to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 399.]

§ 3377. Reletting Contract After Default of Contractor.

(Section 10.) But if such original bidder neglects, fails or refuses for fifteen days after the notice of award to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for said work to the then lowest regular bidder. Should no bids be received in response to this second call for proposals, the council may again advertise for bids under the same proceedings at any time within six months from the time set for the last reception of bids, and let the contract to the then lowest bidder, and such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract, as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 399.]

§ 3378. Default of Contractor—Reletting of Work.

(Section 11.) If the contractor or owner who may have taken any contract does not complete the same within the time limited in the contract or within such further time as the city council may give him, the city engineer shall report such delinquency to the city council, which may relet the unfinished portion of said work after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance; or the city shall have the right at its option to complete the contract and deduct any cost in excess of the contract price thereof from any money,

bonds or warrants due such contractor, or owners, and in the event there is no money, bonds or warrants due such contractor, or owners, from which to deduct such cost then and in such event the city shall have the right to sue such contractor, or owners, and recover from him such cost. [Amendment approved March 9, 1915; Laws 1915, c. 142, p. 345.]

§ 3379. Bond of Contractor.

(Section 12.) All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council with two or more sureties and payable to such city, in a sum not less than twenty-five per cent of the amount of the contract, conditioned for the faithful performance of the contract and indemnifying the city from any detriment, damage or loss growing out of said work; and the sureties shall justify before any person contempt to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions; provided, however, that nothing herein contained shall be construed as to prevent or prohibit the city council from requiring or accepting in any case a bond furnished by a surety company authorized to transact business in the state of Montana. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 400.]

§ 3380. Notice by Owner of Irregular Proceedings or Damages to Property.

(Section 13.) At any time within sixty days from the date of the award of contract any owner or other person, having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings, relating to said improvements, are irregular, defective, erroneous, or faulty, or that his property will be damaged by the making of any of the improvements in the manner contemplated, may file with the city clerk a written notice, specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. Said notice shall state that it is made in pursuance of this section. All objections to any act or proceeding or in relation to the making of said improvements, not made in writing and in the manner and at the time aforesaid, and all claims for damages therefor, shall be waived by such property owner; provided the notice of the passage of the resolution of intention has been actually published and the notices of improvements posted, as provided in this act. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 400.]

§ 3381. Methods for Payment of Improvements.

(Section 14.) Subdivision 1. To defray the cost of the making of any of the improvements provided for in this act, the city council shall adopt one of the two following methods of assessment:

(a) The city council shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided however that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersections out of any funds in its hands, available for that pur-

pose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for between the corner lot and the inside lots of any block, the council may, in the resolution creating any improvement district, provide that whenever any of the improvements herein provided for shall be along any side street, or bordering or abutting upon the side of any corner lot of any block, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of the land, embraced within any such corner lot, shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

(b) The city council shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district, bordering or abutting upon street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that this method of assessment shall not apply to assessments in improvement districts created under the provisions of section 4 of this act; and provided further that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersections out of any funds in its hands, available for that purpose; or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

Whenever any portion of the surface of a street is occupied or used by any person, firm, or corporation under a franchise for railway or street railway purposes, the cost and expense of making such improvements between the rails and for one foot on each side thereof shall be paid by the person, firm or corporation owning such railway; and where double tracks of railway are laid along a street or streets, such person, firm or corporation owning such railway shall pay the cost of the making of such improvement or improvements between such tracks and between all switches, turn-outs and spurs.

Subd. 2. Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall front upon the proposed work or improvement, or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement and the cost of said work on improvement in front of said lots, pieces or parcels of land shall be paid by the city from its general fund.

Subd. 3. It shall be lawful for the owner or owners of lots or land fronting upon any street, the width and grade of which shall have been established by the city council, to perform, at his or their own expense (after obtaining permission from the council so to do, but before said council has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width, or to the center line thereof, and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the

number of cubic yards of cutting and filling made by him or them in such grading, and proportions performed by each owner, and that the same is done to establish width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the city engineer, which certificate the engineer shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the city council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said street for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the city clerk shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned, respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (excepting grading) on such street, in front of any block, at his or their own expense, and the city council shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners, shall be upon the official grade and in condition satisfactory to the city engineer at the time said order is passed.

Subd. 4. The terms, lot, lots, lands, piece or parcel of land, whenever mentioned in this act, shall be deemed to include and shall include property owned or controlled by any person, firm or corporation as a railroad, street or interurban railroad right of way, and wherever a railroad, street or interurban railroad right of way shall front on or about or parallel or be included within or divide longitudinally any street improved under the provisions of this act or shall be included within any district to be assessed for the cost of any improvement provided in this act, such railroad right of way (whether the same is owned in fee or as an easement) shall be included in the assessment and shall be assessed with the same effect as other lots, lands or pieces or parcels of land are assessed, as provided in this act, and such railroad, street or interurban railroad right of way shall be sub-

ject to sale for nonpayment of assessments as in this act provided. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 400.]

§ 3382. Sewer Systems.

(Section 15.) A sewer system may be established in a city, which system may be divided into public, district, and private sewers.

Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and material, and under such regulations as may be prescribed by the council; and there may be constructed such branches and extensions of sewers already constructed, or to be constructed, as may be considered expedient.

To defray the cost of such public sewers, the council may appropriate moneys therefor from the general or sewer fund, or by availing itself of moneys derived from a bond issue authorized by the Constitution and laws of the state.

It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer either at the time of its construction or at any future time for an amount equal to the estimated cost of such district sewer capable of accommodating such property. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 404.]

§ 3383. Assessment to Pay Costs of Improvements.

(Section 16.) To defray the cost of making improvements in any special improvement district, or of acquiring property for the opening, widening or extending any street or alley, or to defray the cost and expense of changing any grade of any street, avenue or alley, the city council shall by resolution levy and assess a tax upon all property in any district created for such purpose by using for a basis for assessment one of the methods set forth in section 14 of this act. Such resolutions shall contain a description of each lot and parcel of land with the name of the owner, if known, and the amount of each partial payment to be made and the day when the same shall become delinquent.

The payment of assessments to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed twenty years, payments to be made in equal annual installments. [Amendment approved March 9, 1915; Laws 1915, c. 142, p. 346. Prior amendment: Laws 1913, c. 89, p. 404.]

§ 3383a. Hearing of Objections—Modification of Assessment.

(Section 17.) Such resolution, signed by the mayor and clerk, shall be kept on file in the office of the city clerk, and a notice signed by the city clerk stating that the resolution levying the special assessment to defray the cost of such improvements is on file in his office, subject to inspection for a period of five days, shall be published at least once in a newspaper published in the city or town. Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council, and the time for such hearing shall not be less than five days after the publication of such notice. At the time so fixed the council shall meet and hear all such objections, and for that purpose may adjourn from day to day, and may, by resolution, modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be

delivered to the city treasurer within two days after its passage. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 405.]

§ 3384. Care of Street Parking—Resolution Levying Assessment.

(Section 18.) Where trees have been planted, grass plots constructed, and grass sown thereon, or any one or more of said improvements have been made in a special improvement district, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed and to otherwise maintain and preserve said improvements, as the council shall deem suitable and proper, and the whole cost of so maintaining said improvements in any improvement district shall be paid by assessing the entire district in either one of the two methods set forth in section 15 of this act. It shall be the duty of said council to estimate as near as practicable the cost of maintaining the improvements in each district for the season; and before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining said improvements within the several districts and in the manner as hereinabove provided. Said resolution levying assessments to defray the cost of maintenance of such improvements shall be in every manner prepared and certified to the same as a resolution levying assessments for making improvements in said special improvement districts, and the money collected therefor shall be paid into a fund known as "Special Improvement, District No..... Maintenance Fund," the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situate; provided, however, that the city council shall have the power not more than once in a year of changing by resolution the boundaries of any maintenance district. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 405.]

§ 3385. Damages to Property and Payment Thereof.

(Section 19.) Whenever the owner or anyone interested in any property situated within any special improvement district, after having filed with the clerk the written notice required by section 14 of this act, shall be awarded or recover any amount on account of damages sustained to such property by reason of the construction of any improvement in said special improvement district, if the resolution levying assessment to defray the cost of making such improvements in said district has not been passed and adopted by the city council, the amount so awarded or recovered shall be added to and constitute a part of the cost of the making such improvements; but if the resolution levying assessments to defray the costs and expenses of making said improvements has been passed and adopted by the city council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in said district for the purpose of paying the amount so awarded or recovered. Said supplemental resolution shall be made and in every manner prepared and certified, the same as the original resolution levying assessments to defray the cost of making such improvements. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 406.]

§ 3386. Construction of Sidewalks and Curbs Without Formation of Special Improvement District.

(Section 20.) The city council may order sidewalks and curbs constructed in front of any lot or parcel of land without the formation of a

special improvement district, and whenever the council shall order any such sidewalk or curb constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk or curb is to be constructed. After the making of such order, written notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty days after the date of service of such notice to cause such sidewalk or curb to be constructed, the city may construct or cause such sidewalk or curb to be constructed, and shall assess the cost thereof against the property in front of which the same are constructed.

When any such sidewalk or curb is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as "Special Sidewalk and Curb Fund," which warrants shall bear interest at the rate of six per cent per annum, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said sidewalks and curbs may be spread over a term of not to exceed eight years, payment to be made in equal annual installments.

The city council shall annually and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks and curbs have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 406.]

§ 3387. Interest on Assessments.

(Section 21.) Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged at the rate of six per cent (6%) per annum, and the treasurer in collecting such special assessment taxes, if the same are payable in one installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 407.]

§ 3388. Costs and Expenses Considered as Cost of Improvements.

(Section 22.) The cost and expense connected with and incidental to the formation of any special improvement district, including costs of preparation of plans, specifications, maps, plats, engineering, superintendence and inspection, and preparation of assessment-rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district; and it shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the

city clerk, whose duty it shall be to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 407.]

§ 3389. Assessments as Lien upon Property.

(Section 23.) Any special assessment made and levied to defray the cost and expense of any of the work enumerated in this act, together with any percentages imposed for delinquency, and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment with all penalties, costs and interest. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 408.]

§ 3389a. Mistakes or Misnomers not to Invalidate Assessment.

(Section 24.) When under any of the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 408.]

§ 3389b. Form of Bonds and Warrants.

(Section 25.) All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No.	
United States of America.	
State of Montana.	
Warrant or	Dollars
(Bond No.)	\$....
Interest at the rate of 6% per annum payable annually.	

Special Improvement District Coupon Warrant or Bond.

....Montana,

Issued by the city of....Montana.

The treasurer of the city of Montana will pay to or bearer, the sum of dollars as authorized by resolution No. as passed on the day of 19... creating Special Improvement District No. for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of, Montana.

This warrant (or bond) bears interest at the rate of six per cent (6%) per annum from the date of registration of this warrant (or bond) as expressed herein, until the date called for the redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of in each year, unless paid previous thereto and as expressed

by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed (Seal) in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of Montana, relating to the issuance thereof.

Dated at, Montana, this day of, 19...

City of, Montana.

By, Mayor.

....., City Clerk.

Registered at the office of the city treasurer of, Montana, this day of, 19...

.....,

City Treasurer.

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest at the rate of six per cent (6%) per annum, from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall be signed by the mayor and clerk and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto they shall also be so registered and shall bear the signature of the mayor and clerk; provided, however, that said coupons may bear the facsimile signature of said officers in the discretion of the city council. Said bonds shall be in denominations of one hundred (\$100) dollars or fractions or multiples thereof; and may be issued in installments, and may extend over a period not to exceed twenty years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided that the treasurer shall first pay out of such special improvement district fund annually the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be

known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date, so fixed, interest shall cease. When it is provided by the resolution creating the district that the work be paid for in warrants (or bonds), the city council shall by resolution fix the denominations of such warrants (or bonds), which may be of one hundred dollars, or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent (6%) per annum, and provide for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed twenty years from and after the date of issuance. [Amendment approved March 9, 1915; Laws 1915, c. 142, p. 346. Prior amendment: See Laws 1913, c. 89, p. 408.]

§ 3389c. Payment in Bonds and Warrants.

(Section 26.) Whether provided in the call for proposals, or not, all warrants let under the provisions of this act shall be payable in bonds or warrants issued under the provisions hereof, and the city council may provide by contract with the person, persons or corporation doing the work or making the improvement for the payment of which such warrants or bonds are issued, to deliver the said warrants or bonds in installments as the work progresses, or upon the entire completion thereof; provided, however, that no warrants or bonds must be delivered to such contractor or contractors in excess of the amount of the work actually done at the time of the delivery, nor shall the total amount issued be in excess of the total cost and expense of the said improvements, and no warrants or bond shall be delivered or received in payment of a less sum than its face value. And when it becomes necessary to pay for private property taken for the opening, widening or extending of any street, avenue or alley, or to pay any amount awarded or recovered on account of damages to any property caused by the making of any improvements, in money, in cases where the person whose property is so taken or damaged refuses to receive his pay in warrants or bonds, then the council shall have the power, under such regulations as it may prescribe, to sell such bonds or warrants for not less than par, and devote the moneys derived therefrom to the payment of the damages assessed or agreed upon for such property or the damages thereto. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 411.]

§ 3389d. Duty of City and County Treasurers.

(Section 27.) It shall be the duty of the city treasurer of every city whose taxes for general, municipal and administrative purposes are certified to and collected by the county treasurer, in accordance with the provisions of section 3358, Revised Codes of Montana of 1907, on or before the first Monday of October of each year, to certify to the county treasurer of the county in which such city is situated all special assessments and taxes levied and assessed in accordance with any of the provisions of this act, and the county treasurer must collect the same in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him.

In every city which shall provide by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city treasurer, such city treasurer shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this act,

in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him; and all of the provisions of section 3357 of the Revised Codes of Montana of 1907 shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city taxes. When one payment becomes delinquent all payments shall, at the option of the city council, by appropriate resolutions duly adopted, become delinquent, and the whole property shall be sold the same as other property is sold for taxes. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 411.]

§ 3389e. Correction of Assessment—Collection upon Relevy of Tax.

(Section 28.) Whenever, by reason of any alleged nonconformity to any law or ordinance, or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the council may make all necessary orders and ordinances and may take all necessary steps to correct the same and to reassess and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto; and may reassess and relevy the same with the same force and effect as an original levy; whenever any apportionment or assessment is made and any property is assessed too little or too much, the same may be corrected and reassessed for such additional amount as may be proper, or the assessment may be reduced even to the extent of refunding the tax collected. Any special tax upon reassessment, or relevy, shall, so far as is practicable, be levied and collected as the same would have been if the first levy had been enforced; and any provisions of any law or ordinance specifying a time when, or order in which acts shall be done in a proceeding which may result in a special tax shall be taken to be subject to the qualifications of this act. Any and every ordinance, or part thereof, of any council heretofore passed in substantial conformity with this section, is hereby legalized. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 412.]

§ 3389f. Payment of Tax Under Protest—Action to Recover.

(Section 29.) When any tax levied and assessed under any of the provisions of this act is deemed unlawful by the party whose property is thus taxed, or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest, to the city or county treasurer, as the case may be, and thereupon such party so paying, or his legal representative, may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid, or against the city in whose behalf the same was collected, to recover such tax or any portion thereof, so paid, under protest; provided, however, that any action instituted to recover any tax paid under protest must be commenced within sixty days after the date of payment thereof. The tax so paid under protest shall be held by the city or county treasurer, as the case may be, until the determination of any action brought for the recovery thereof. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 413.]

§ 3389g. Mistake in Name or Description not Fatal.

(Section 30.) Any mistake in the description of the property or the name of the owner shall not vitiate any liens created by this act, unless it is impossible to identify the property from the description. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 413.]

§ 3389h. Owner of Property—Definition of Terms—Publication and Posting of Notices.

(Section 31.) Subdivision 1. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lot and lands, by deeds duly recorded in the county recorder's office in each county, or the person in possession of lands, lots, or portions of lots, or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated, and deemed to be the "owner" for the purpose of this act, according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Subd. 2. The words "work," "improved" and "improvement," as used in this act, shall include all work or the securing of property mentioned in this act, and also the construction, reconstruction and repairs, of all or any portion of said work.

Subd. 3. The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him; also the cost of printing and advertising, as provided in this act; also, the compensation of the persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented to the city clerk by itemized bill, duly verified by oath of the demandant.

Subd. 4. The notices, resolutions, orders or other matter required to be published by the provisions of this act, shall be published in a daily newspaper or in a semi-weekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued during the period specified for said publication, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that in case there is no daily, semi-weekly or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in the three of the most public places in such city except herein otherwise specifically provided. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein. The word "twice," as used in this act, referring to the number of times notices, resolutions or other matter shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

Subd. 5. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized for municipal purposes.

Subd. 6. The words "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadam, or of bituminous rock or asphalt, or of wood, brick or other material, whether patented or not, which the city council shall by ordinance or resolution adopt.

Subd. 7. The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts and places, which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets, as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

Subd. 8. The term "city engineer," as used in this act, shall be understood and so construed as to include, and is hereby declared to include any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no city engineer the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of the city engineer, and all provisions hereof applicable to the city engineer shall apply to such person so appointed.

Subd. 9. The term "city council" is hereby declared to include any body or board which under the law is the legislative department of the government of the city.

Subd. 10. In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the council or other chief executive officer of the municipality.

Subd. 11. The terms "clerk" and "city clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said council.

Subd. 12. The term "quarter block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street halfway from such intersection to the next main street, or, when no main street intervenes all the way to a boundary line of the city.

Subd. 13. The term "city treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

Subd. 14. The term "street intersection," wherever used in this act, shall be held to mean that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 413.]

§ 3389i. Adjournment of Hearing by Council.

(Section 32.) Whenever in proceedings hereunder, a time and place for hearing by the city council are fixed, and, from any cause, the hearing is not then and there held or regularly adjourned to a time and place fixed, the power or jurisdiction of the city council in the premises shall

not thereby be divested or lost, but the city council may proceed anew to fix a time and place for the hearing, and cause notice thereof to be given by publication by at least one insertion in a daily, semi-weekly or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act in as in the first instance. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 416.]

§ 3389j. Posting and Publication of Notices by Clerk—Effect of Errors in Proceedings.

(Section 34.) Whenever any resolution, order, notice or determination is required to be published or posted, and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order or determination hereunder when the same is actually published or posted for the time herein required. [Amendment approved March 14, 1913; Laws 1913, c. 89, p. 416.]

§ 3389k. Repealing Clause.

(Section 35.) Sections 3367, 3369, 3370, 3371, 3372, 3373, 3374, 3375, 3376, 3377, 3378, 3379, 3380, 3381, 3382, 3383, 3384, 3385, 3386, 3387, 3388, 3389, 3396, 3397, 3398, 3399, 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3410, 3411, 3412, 3417, 3418, 3419, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427, 3428, 3429, of the Revised Codes of Montana, of 1907, and Chapter 127 of the acts of the Eleventh Legislative Assembly of the state of Montana, being an act entitled, "An act to empower city and town councils to pay in installments for any improvements which are to be paid for by a special assessment against any property and for such installments to issue annual interest bearing warrants and to levy and collect assessments to pay for the same, and to extend the payment of the installments over any period not exceeding eight years," approved March 8, 1909; and Chapter 62 of the acts of the Twelfth Legislative Assembly of the state of Montana, being an act entitled, "An act to amend section 3398 of the Revised Codes of Montana of 1907 and providing that interest coupons for the payment of interest of any special improvement district warrant of any city or town within the state of Montana may bear any engraved or lithographed facsimile signature of the mayor and city or town clerk of such city or town," approved March 2, 1911; and all other acts and parts of acts in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall be construed to affect the validity of any bonds or warrants heretofore issued or contracted to be issued under the provisions of any of the sections or laws hereby repealed.

(Section 36.) This act shall be in full force and effect from and after its passage and approval. [Approved March 14, 1913; Laws 1913, c. 89, p. 417.]

§ 3389l. Curative Provision Concerning Special Improvement Districts Since March 14, 1913.

That all special improvement districts which any city or town council in the state of Montana has created or attempted to create since March 14,

1913, pursuant to the provisions of Chapter 89 of the acts of the Thirteenth Legislative Assembly of the state of Montana, the creation or attempted creation of which was irregular because of the failure of any such city or town council, so creating or attempting to create the same, to proceed in the creation of any such districts, or in giving notice thereof, in the manner required by Chapter 89 of the acts of the Thirteenth Legislative Assembly of the state of Montana; and any and all bonds and warrants issued, or to be issued to defray the cost and expense incurred, or to be incurred in the construction of the improvements made or to be made in any such districts, and the assessments levied or to be levied in any such districts, are hereby legalized and validated, and the acts and proceedings of the city or town council of any such city or town done or had with reference thereto, are hereby made of as binding force and effect, as though they were done and had in strict conformity with the provisions of said Chapter 89 of the acts of the Thirteenth Legislative Assembly of the state of Montana; provided however, that a resolution of intention to create, or a resolution creating or attempting to create any such district, was duly and properly passed and adopted by the city or town council of any such city or town, and approved by the mayor thereof, prior to giving notice thereof; and provided further that notice of the passage of such resolution of intention to create, or resolution creating or attempting to create any such district, or notice of the creation or intention to create or attempted creation of any such district, and of the time and place when and where the city or town council of any such city or town would hear and pass upon all protests made by any owner of property in any such district liable to be assessed for the work done or proposed to be done therein, against the making of such improvement, or the creation of any such district, and describing the general character of the improvements proposed to be made, the estimated cost thereof, and referring to the resolution on file in the office of the city or town clerk of any such city or town, for the description of the boundaries of any such district, was published for five days in a daily newspaper, or in some one issue of a weekly paper published in any such city or town, or in case no newspaper was published in any such city or town, at the time such notice was given, then, provided, it was posted for five days in three public places in such city or town; and provided further that a copy of such notice so published or posted was mailed to every person, firm or corporation, or to the agent of every person, firm or corporation, having property within any such district, at his last known address, upon the same day such notice was first published or posted; and provided further that said notice was published or posted, and mailed on a day not less than fifteen days prior to the date set for hearing and passing upon all protests made in any such district; and provided further that at the next regular meeting of the city or town council of any such city or town after the expiration of said fifteen days, the city or town council of any such city or town, proceeded to hear and pass upon, and did hear and pass upon all protests made in any such district; and provided further that no sufficient protests were made in any such district to prevent further proceedings therein, as provided in Chapter 89 of the acts of the Thirteenth Legislative Assembly of the state of Montana; and provided further that the resolutions, ordinances, notices, acts, and proceedings required to be passed, adopted, approved, given, done and had by the provisions of Chap-

ter 89 of the acts of the Thirteenth Legislative Assembly of the state of Montana for the letting of any contract for the construction of any improvements in any such district, and the resolutions, ordinances, notices, acts, and proceedings required to be passed, adopted, approved, given, done and had by said Chapter 89 of the acts of the Thirteenth Legislative Assembly of the state of Montana, for the issuance and delivery or sale of any bonds or warrants of any such district where, or shall be duly and regularly passed, adopted, approved, given, done and had in conformity with the provisions of said Chapter 89 of the acts of the Thirteenth Legislative Assembly of the state of Montana, and the laws of the state of Montana relating thereto; and provided further that the assessment to defray the cost of making the improvements in any such district was, or shall be duly and regularly passed, adopted and approved, and notice thereof duly and regularly given, and a copy of the resolution levying any such assessment, certified to by the city or town clerk, delivered to the city or town treasurer of any such city or town, within two days after its final passage, as required by the provisions of said Chapter 89 of the acts of the Thirteenth Legislative Assembly of the state of Montana; and provided further that the sum levied and assessed or to be levied and assessed against the property of any such district did not, or shall not exceed the cost and expense of making the improvements therein; and provided further that the improvements made or to be made in any such district, are improvements which a city or town can legally make under the provisions of said Chapter 89 of the acts of the Thirteenth Legislative Assembly of the state of Montana; and provided further that nothing herein contained shall be deemed to affect or disturb rights acquired under any judicial decision made in any cause involving the procedure of any special improvement district created, or attempted to be created under the provisions of Chapter 89 of the acts of the Thirteenth Legislative Assembly of the state of Montana.

All acts or parts of acts in conflict herewith are hereby repealed.

This act shall be in full force and effect from and after its adoption and approval by the Governor. [Approved March 9, 1915; Laws 1915, c. 142, p. 349.]

§§ 3396-3412. [Repealed.]

By act approved March 14, 1913; Laws 1913, c. 89, p. 416.

§§ 3417-3429. [Repealed.]

By act approved March 14, 1913; Laws 1913, c. 89, p. 416.

The failure to acquire jurisdiction to proceed in the creation of an improvement district by taking the necessary steps in that direction required by law cannot be cured through failure of any property owner to file with the city clerk his written objection to the regularity of the proceedings within sixty days of the letting of the contract. *Shapard v. City of Missoula*, 49 Mont. 269, 275 et seq., 141 Pac. 544.

§ 3441.

The operation of sections 3441-3446, in so far as they have to do with the ap-

pointment of appraisers, with an appraisal by them, and with an appeal therefrom, is, by section 3441, expressly restricted to those cases where a grade has been established by the corporate authority of the city or town, where a building has been erected with reference to such grade, where the grade is afterward changed, and where such change entails the raising or lowering of the building, to the damage of the owner. *State v. District Court*, 48 Mont. 614, 616, 139 Pac. 791.

The district court is without jurisdiction to entertain an appeal from an award of a board of appraisers where the damages complained of are the result of a change in the street from contour to grade. *State v. District Court*, 48 Mont. 614, 617, 139 Pac. 791.

Editorial Notes.

Right of abutting owner to compensation for changing grade of street.

4 Am. St. Rep. 401; 43 Am. Dec. 723.

Abutter's right to compensation for railroads in streets. 36 L. R. A. (N. S.) 666.

§ 3442.

The power of a city to appoint a board of appraisers, and to clothe it with any

authority, depends, not only upon the situation indicated in the note to section 3441, ante, but is made further to depend upon the inability of the city and the owner to agree; this, of course, implies some effort, and, before the appointment is made, it should appear that they were, in fact, unable to agree. *State v. District Court*, 48 Mont. 614, 617, 139 Pac. 791.

BONDS AND INDEBTEDNESS.

§ 3455.

This section does not require that the notice of an election called for the purpose of obtaining authority to issue water and sewer bonds, shall state the time of payment of interest thereon; that time is fixed by section 3459, post, and the elector is presumed to understand that the time of payment will be that fixed by the statute. *Carlson v. City of Helena*, 39 Mont. 82, 111, 17 Ann. Cas. 1233, 102 Pac. 39.

§ 3459.

Notice of election need not state time of payment of interest on bonds. See note ante, § 3455.

Condemnation of water, by city, for more necessary public use. See note post, § 7334.

A constitutional requirement that the revenues derived from a water plant shall be devoted to the payment of a debt contracted for a water supply does not imply a legislative prohibition to grant authority to a municipality to make additional provision for payment, as it has done in this section. *Carlson v. City of Helena*, 39 Mont. 82, 108, 17 Ann. Cas. 1233, 102 Pac. 39.

§ 3460.

Under this section, it is incumbent upon the city council, in providing for the issuance of water and sewer bonds, to make them redeemable, at its option, at a time prior to their maturity; unless it does so, the bonds are void. *Carlson v. City of Helena*, 39 Mont. 82, 109, 17 Ann. Cas. 1233, 102 Pac. 39.

§ 3464a. Public Parks and Grounds—Additional Indebtedness of Municipalities to Provide.

(Section 1.) A city or town council, in addition to the power it now has under the law, has and is hereby granted and given the further power to contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the purpose of purchasing and improving lands for public parks and grounds provided that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not at any time exceed three per centum of the total assessed valuation of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; and provided further that no money must be borrowed on bonds issued for the purchase of lands and improving same for public parks and grounds until the proposition has been submitted to the vote of the taxpayers of the city or town affected thereby, and a majority vote cast in favor thereof.

(Section 2.) Nothing in this act shall be so construed as to repeal or amend section 3259 of the Revised Codes of Montana of 1907, or any part or portion thereof. [Approved March 3, 1909; Laws 1909, c. 55, p. 62.]

§ 3466.

Establishment of highway by prescription. See note ante, § 1340.

Sufficiency of title of act. *State v. District Court*, 49 Mont. 146, 152, 140 Pac. 732.

§ 3484.

This section was not curative in char-

acter, but was intended simply to preserve the statu quo of municipal corporations in existence at the time of the adoption of the code of 1895. It imparted no validity to a void ordinance providing compensation for the acting mayor of a municipality. *McGillie v. Corby*, 37 Mont. 249, 254, 17 Ann. Cas. 1263, 95 Pac. 1063.

TOWN SITES.

§ 3531. Laying Out and Sale of Unoccupied or Unclaimed Lands.

If there be any unoccupied or vacant unclaimed lands within the limits of such city or town site, the judge may cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, schoolhouse lots, parks and levees, and cause all necessary roads, streets, lanes and alleys to be laid out through the same and dedicated to public use; and the judge may sell the same in suitable parcels to possessors of adjoining lands residing thereon, or to other persons, at a price not less than ten dollars per lot; and in case two or more claimants apply for the same lot or lots, he must sell the same by auction to the highest bidder for cash. If any such lots remain unsold at the end of six months after the filing of the town plat, the said judge must sell said unclaimed lots, on application, at public auction to the highest bidder for cash, and give deeds therefor to the several purchasers; but, nevertheless, the judge may sell and he is hereby empowered to sell and execute deeds for any unoccupied, vacant and unsurveyed portions of a town site, without first causing the same to be surveyed or platted into blocks, lots, roads, streets and alleys, or otherwise subdivided, whenever it shall be made to appear to the judge, by a written application to purchase the same, established by evidence that the unsurveyed portions of the town site sought to be purchased are irregular and fragmentary strips or pieces of land within the exterior boundaries of the town site, and that they are unoccupied and vacant, and that it would be an unnecessary expense and impracticable to cause the same to be first surveyed or platted into blocks, lots, roads, streets and alleys, or otherwise subdivided; and the sale of such unoccupied vacant and unsurveyed portions of a town site shall be conducted, as near as may be, in the manner provided for the sale of town lots, except that the price to be paid for any one irregular, fragmentary, unoccupied, vacant and unsurveyed portion of a town site shall not be less than one hundred dollars; and all deeds heretofore executed by the judge who has sold and conveyed irregular, fragmentary, unoccupied, vacant and unsurveyed portions of a town site are hereby confirmed and made lawful, valid and effectual as if such, or any, unsurveyed portion of the town site had first been surveyed and platted into blocks, lots, roads, streets and alleys, or otherwise subdivided. [Amendment approved February 11, 1911; Laws 1911, p. 25.]

§ 3537. Informalities or Irregularities not to Invalidate — Legalizing Deeds.

No mere informality, failure, or omission, on the part of any person or officer named in this article, invalidates the acts of such person or officer, but every certificate or deed granted to any person, pursuant to the provisions of this article, is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed. And if the original or first deed executed by the district judge granting and conveying any lot or lots be lost or destroyed or cannot be found, and if such deed or deeds so executed have not been recorded in the office of the county clerk of the county in which the property is situated, the district judge shall, upon written application stating the facts, execute and deliver another deed or deeds, as the case may be, to the purchaser of such lot or lots, or to his heirs or grantees, upon a showing sustained by evi-

dence satisfactory to the district judge that the original or first deed or deeds were executed and have been lost or destroyed, or cannot be found, and have not been recorded; and all deeds heretofore executed by the district judge in lieu of the original or first deed, or deeds, which have been lost or destroyed, or which could not be found, and which have not been recorded in the office of the county clerk of the county in which the property is situated, are hereby legalized, confirmed and made valid and effectual as if such deed or deeds were the original, first and only deed or deeds executed therefor. [Amendment approved February 11, 1911; Laws 1911, p. 27.]

COMMON LAW AND CODES.

§ 3552.

Holidays. See § 6217.

Nonjudicial days. See § 6296.

Nonprohibition of ministerial acts on Sunday. See note, § 6296.

By adopting the common law, as shown in this section and section 8060, post, this state adopted the crown's prerogative with respect to public debts; if a person is indebted to individuals and to the state, the state as sovereign is entitled to priority of payment. *American Bonding Co. v. Reynolds*, 203 Fed. 356, 358.

It was the rule at common law that Sunday was dies non juridicus, but the prohibition involved extended only to acts strictly judicial in character; it had no application whatever to ministerial acts. *State v. Alderson*, 49 Mont. 387, 410, 142 Pac. 210.

In the absence of a prohibitory statute, the rule of the common law, as to the doing of acts on Sunday, prevails; and any ministerial act, such as the publication of a proposed constitutional amendment, may be done on Sunday and as efficaciously as if done on any other day. *State v. Alderson*, 49 Mont. 387, 410, 142 Pac. 210.

At common law, Sunday was dies non juridicus, but the prohibition involved extended only to acts strictly judicial in character; it had no application whatever to ministerial acts. *State v. Alderson*, 49 Mont. 387, 410, 142 Pac. 210.

Editorial Notes.

What term "common law" includes. Ann. Cas. 1913E, 1222.

Extent of adoption of common law. Ann. Cas. 1913E, 1232, 22 L. R. A. 501.

§ 3553.

It was the general purpose of the codes to crystallize, in concrete form, the rules of law as they already existed. *Mantle v. White*, 47 Mont. 234, 242, 132 Pac. 22.

§ 3555.

Applied. See note post, § 7887.

§ 3557.

This section has no application where there is no conflict between articles of

the same chapter of the codes; it is only in case of conflicting provisions that one article can be treated independently of another. *Brown v. Foster*, 48 Mont. 114, 119, 135 Pac. 993.

Articles of the same chapter of the codes, not in conflict with each other, must be construed together. *Brown v. Foster*, 48 Mont. 114, 119, 135 Pac. 993.

§ 3558.

Construing together different sections relative to the negotiation of loans by counties. See, also, note, ante, § 2933.

Applied in construing various sections of the code relative to the raising of money, by counties. *Morse v. Granite County*, 44 Mont. 78, 96, 119 Pac. 286.

Applied in construing sections 7, 18, and 33 of the laws of 1913, chapter 74, relative to the registration of voters at special elections. *State v. Stromme*, 49 Mont. 25, 26, 139 Pac. 1002.

The circumstance that a particular clause, near the end of an act, is, in numerical order, the last word upon the subject, is not sufficient to prevail over all other provisions of the act indicating a different legislative intent. *State v. Stromme*, 49 Mont. 25, 28, 139 Pac. 1002.

Where a clause seems to have crept into the body of an act as the result of misconception or ill-advised amendment, and it cannot be given effect without violence to the clear and plain intent of the law, considered in its entirety, it must be regarded as an inadvertence, and as not militating against the clear legislative intent. *State v. Stromme*, 49 Mont. 25, 28, 139 Pac. 1002.

The circumstance that a section of an act is the last word upon the subject is not sufficient to prevail over all other provisions of the act indicating a different legislative intent. *State v. Stromme*, 49 Mont. 25, 28, 139 Pac. 1002.

§ 3562.

The division of the codes into parts, titles, chapters, articles, and sections is a mere device for convenience, and no implication or presumption of a legislative construction is to be drawn therefrom. *Brown v. Foster*, 48 Mont. 114, 119, 135 Pac. 993.

PART III.

CIVIL CODE.

§ 3599.

Enforcement of minor's rights. See notes, post, §§ 6481 and 6485.

At common law, an infant plaintiff sued by a guardian ad litem, but under the Montana statutes, sections 3599 and 6481, he appears by his general guardian, or his

guardian ad litem. *Melzner v. Northern Pac. Ry. Co.*, 46 Mont. 162, 175, 127 Pac. 146.

Editorial Notes.

Necessity for appointment of guardian ad litem when infant defendant has general or natural guardian. *Ann. Cas.* 1912D, 363.

LIBEL AND SLANDER.

§ 3602.

Complaint in libel or slander. See post, § 6577.

New trial for jury's failure to follow instructions. See note post, § 6794.

Statute of limitations in libel. See post, § 6448.

The publisher is answerable if his publication is false and unprivileged, though it was made in good faith, from worthy motives, and with the utmost belief in its truth. *Cooper v. Romney*, 49 Mont. 119, 127, 141 Pac. 289.

The publication of an article about a person, who is not engaged in any legitimate business, such as a professional wrestler, and which article contains the statement that he "refused to pay room rent," is not libelous per se. *Brown v. Independent Pub. Co.*, 48 Mont. 374, 380, 138 Pac. 258.

The publication of a statement, which tends to expose the mother of children to the hatred and contempt of every right-thinking person, is libelous per se. *Kelly v. Independent Pub. Co.*, 45 Mont. 127, 139, *Ann. Cas.* 1913D, 1063, 38 L. R. A. (N. S.) 1160, 122 Pac. 735.

If a libel is a false and unprivileged publication of defamatory matter, and publications of a certain character, made without malice, are privileged, then an allegation that a publication of that character was false and malicious, alleges, in substance, that it was false and unprivileged. *Cooper v. Romney*, 49 Mont. 119, 127, 141 Pac. 289.

Unless the publication is libelous per se, special damages must be alleged; the innuendo cannot change the character of the publication; if it is not libelous per se, it cannot be made so by innuendo. *Brown v. Independent Pub. Co.*, 48 Mont. 374, 379, 138 Pac. 258.

In an action for libel, the plaintiff must be nonsuited, unless he introduces affirmative evidence of the falsity of the publication; so far as presumptions are concerned, the evidence is at equipoise at the

very outset of the case; the plaintiff is presumed innocent of whatever wrong a publication imputes to him, and the publisher is likewise presumed to be innocent of wrong in making the publication. *Cooper v. Romney*, 49 Mont. 119, 126, 141 Pac. 289.

An action for an alleged libel, in respect to an unlawful business carried on by the plaintiff, such as that pursued by a professional wrestler, in violation of section 8576, post, cannot be maintained; the illegality of the business is an answer to the complaint. *Brown v. Independent Pub. Co.*, 48 Mont. 374, 379, 138 Pac. 258.

Editorial Notes.

Newspaper libel. 15 Am. St. Rep. 333.

What words are actionable per se. 116 Am. St. Rep. 802.

Evidence to support innuendo. 53 Am. St. Rep. 698.

Province of judge and jury in libel cases. 13 Am. St. Rep. 625.

What is an excessive verdict in an action for libel. *Ann. Cas.* 1913B, 700.

§ 3604.

Privileged communications. See post, §§ 8331-8333.

If a newspaper reporter writes up a sensational story about a mother's inhuman treatment of her children, the material of which is gathered from gossip heard by him around the sheriff's office, prior to the institution of any legal proceeding, the publication of such story is not privileged. *Kelly v. Independent Pub. Co.*, 45 Mont. 127, 138, *Ann. Cas.* 1913D, 1063, 38 L. R. A. (N. S.) 1160, 122 Pac. 735.

Malice is not an essential element of libel; it is material only as affecting the amount of the recovery, in cases involving the question of privileged communications. *Cooper v. Romney*, 49 Mont. 119, 127, 141 Pac. 289.

To found liability upon a communication prima facie privileged, actual and not implied malice must be shown; such was the rule at common law, and such must necessarily be the rule under the statute. *Cooper v. Romney*, 49 Mont. 119, 127, 141 Pac. 289.

Where the communication appears to have been privileged, the plaintiff must show, not only actual malice, but falsity in the publication. *Cooper v. Romney*, 49 Mont. 119, 127, 141 Pac. 289.

Editorial Notes.

Privileged communications, expressions or statements. 2 Am. Dec. 431, 15 Am. Dec. 232, 31 Am. Rep. 708, 104 Am. St. Rep. 110.

Privileged communications, attorney's

liability for words spoken at a trial. 17 Am. Dec. 194, 7 Ann. Cas. 603.

Statements by party in pleadings in civil action as privileged within law of libel and slander. Ann. Cas. 1913D, 444, 12 Ann. Cas. 1025, 22 L. R. A. 649, 13 L. R. A. (N. S.) 820.

Liability of school board or superior officer for libel or slander of teacher. Ann. Cas. 1913E, 195.

Publication of pleadings before they come before court as privileged within law of libel. 11 Ann. Cas. 162, 15 Ann. Cas. 618, 38 L. R. A. (N. S.) 913.

Privileged communications as to character or reputation of servant. 4 L. R. A. (N. S.) 1104.

MARRIAGE AND DIVORCE.

§ 3607.

Assumption of marital relation. See note, post, § 3614.

State as party to marriage. See note post, § 3670.

Cohabitation is an indispensable element to the existence of a common-law marriage, or of the "mutual and public assumption of the marital relation." *O'Malley v. O'Malley*, 46 Mont. 549, 559, Ann. Cas. 1914B, 662, 129 Pac. 501.

Editorial Notes.

What constitutes common-law marriage. 124 Am. St. Rep. 104, Ann. Cas. 1912D, 597.

Validity of marriage, by what laws determined. 8 Am. Dec. 133; 57 L. R. A. 155; 11 L. R. A. (N. S.) 1082; 17 L. R. A. (N. S.) 800; 26 L. R. A. (N. S.) 179; 28 L. R. A. (N. S.) 753.

Marriage during continuance of prior valid marriage, effect of. 46 Am. Dec. 130.

Conflict of laws, validity of marriage, when contracted by residents of a state in violation of its laws beyond its boundaries. 60 Am. St. Rep. 941.

Status of marriage originally void because of legal impediment where cohabitation is continued after removal of impediment. Ann. Cas. 1913D, 544; 6 Ann. Cas. 484.

Presumption and burden of proof as to validity of subsequent marriage. 17 Ann. Cas. 680.

§ 3612.

If a man, who has a wife living, from whom he is not divorced, contracts a second marriage, it is void. In re *Huston's Estate*, 48 Mont. 525, 530, 139 Pac. 453.

Editorial Notes.

What marriages are void. 79 Am. St. Rep. 361.

Rights of parties to void marriage. 96 Am. St. Rep. 267; Ann. Cas. 1913A, 236.

§ 3614.

Presumption of marriage. See post, § 7962, subd. 30.

Though the evidence is insufficient to show that public assumption of the marital relation which our statute demands, to constitute marriage, yet, if there is enough to create a foundation for the presumption that the parties are married according to the laws of another state, the courts of this state will recognize the relationship, although it is such a marriage as that, if contracted in this state, it would not be valid under our laws. In re *Huston's Estate*, 48 Mont. 525, 531, 139 Pac. 458.

Editorial Notes.

Foreign marriages. Ann. Cas. 1912C, 625.

Validity of marriage when contracted by residents of a state in violation of its laws beyond its boundaries. 60 Am. St. Rep. 941.

§ 3615a. Marriages Between Caucasian and Other Races.

(Section 1.) Every marriage hereafter contracted or solemnized between a white person and a negro or a person of negro blood or in part negro, shall be utterly null and void.

(Section 2.) Every marriage hereafter contracted or solemnized between any white person and a Chinese person shall be utterly null and void.

(Section 3.) Every marriage hereafter contracted or solemnized between a white person and a Japanese person shall be utterly null and void.

(Section 4.) Every such marriage mentioned in either of the foregoing sections which may be hereafter contracted or solemnized without the state of Montana by any person, who has, prior to the time of contracting or solemnizing said marriage been a resident of the state of Montana shall be null and void within the state of Montana.

(Section 5.) Any person or officer who shall solemnize any such marriage within the state of Montana, shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of five hundred dollars or imprisonment in the county jail for one month, or both. [Approved March 3, 1909; Laws 1909, c. 49, p. 57.]

§ 3641.

In divorce, the summons must be personally served upon insane husband. See note, post, § 6519.

Vacation of decree of divorce against insane husband. See note, post, § 6589.

§ 3642.

A divorced woman cannot become the "widow" of her former husband; she is not a widow within the meaning of section 3708, post. *O'Malley v. O'Malley*, 46 Mont. 549, 557, Ann. Cas. 1914B, 662, 129 Pac. 501.

A decree of divorce, absolute on its face and duly entered by a court of competent jurisdiction, bars the subsequent assertion of dower, under section 3708, post. *O'Malley v. O'Malley*, 46 Mont. 549, 556, Ann. Cas. 1914B, 662, 129 Pac. 501.

Editorial Notes.

Divorce as barring dower. Ann. Cas. 1914B, 665.

§ 3646.

This definition implies that the separation is without justification; if there is justification, one of the spouses may leave without being guilty of "willful desertion." *Farwell v. Farwell*, 47 Mont. 574, 581, Ann. Cas. 1915C, 78, 133 Pac. 958.

Editorial Notes.

Desertion as ground for divorce. 119 Am. St. Rep. 617.

What constitutes desertion as ground for divorce. 138 Am. St. Rep. 146.

Refusal of wife to follow husband to new domicile as desertion. 5 Ann. Cas. 852; 4 L. R. A. (N. S.) 145.

Desertion by forcing wife to leave marital home. 29 L. R. A. (N. S.) 614.

§ 3650.

In case of separation by consent, consent is not revoked by the fact that the

husband fails to support his wife, when she does not complain, nor because he attempts to secure a divorce, where she is trying to do the same thing. *Bordeaux v. Bordeaux*, 43 Mont. 102, 116, 115 Pac. 25.

The presumption is, that the separation of a man and his wife, by consent, continues until one of them revokes consent and seeks reconciliation and restoration; if this is done, and the other party rejects the overtures thus made, the latter is guilty of desertion. *Bordeaux v. Bordeaux*, 43 Mont. 102, 110, 115 Pac. 25.

§ 3652.

The husband is ordinarily the head of the family, and has the right to select the home, but he loses such right where he abandons his wife. *Mennell v. Wells* (Mont.), 149 Pac. 954.

§ 3656.

Revisionary legislation. See note post, § 3657.

History and status of section. *State v. District Court*, 49 Mont. 146, 150, 140 Pac. 732.

§ 3657.

What should be classed under the head of revisionary legislation, on the subject of divorce, and as falling within the exception of the constitution applicable to such legislation. *State v. District Court*, 49 Mont. 151, 140 Pac. 732.

History of section. *State v. District Court*, 49 Mont. 146, 149, 140 Pac. 732.

Plan pursued in the adoption of the four codes. *State v. District Court*, 49 Mont. 146, 150, 140 Pac. 732.

§ 3658.

Revisionary legislation. See note ante, § 3657.

History and status of section. *State v. District Court*, 49 Mont. 146, 150, 140 Pac. 732.

§ 3659.

The fact that the plaintiff, suspecting his wife of adultery, laid a trap and caught her flagrante delicto, thereby securing evidence to be used by him in his divorce proceeding, is not sufficient to charge him with connivance so long as he was not, in any respect, responsible for her adulterous act. *Farwell v. Farwell*, 47 Mont. 574, 578, Ann. Cas. 1915C, 78, 133 Pac. 958.

Editorial Notes.

Connivance as bar to divorce. 120 Am. St. Rep. 520.

Connivance in adultery, what is not. 54 Am. Rep. 492.

§ 3670.

The language of this section, as well as that of section 3674, post, is imperative. *Franklin v. Franklin*, 40 Mont. 348, 352, 20 Ann. Cas. 339, 26 L. R. A. (N. S.) 490, 106 Pac. 353.

A divorce asked for on the ground that the defendant has been convicted of a felony must be denied, if the action is not brought within two years after final judgment and sentence; and, in the absence of any excuse for the delay in bringing suit, it is proper for the court, of its own motion, to dismiss the action, notwithstanding the defendant's default; section 6475, post, does not apply in divorce suits, as in cases for the enforcement of a private right; in divorce cases, the state is interested as an adverse party on the ground of public policy. *Franklin v. Franklin*, 40 Mont. 348, 350, 352, 20 Ann. Cas. 339, 26 L. R. A. (N. S.) 490, 106 Pac. 353.

Editorial Notes.

Duty of court, in the absence of objection by defendant, to dismiss a suit for divorce, because it was not brought within the time allowed by statute. 26 L. R. A. (N. S.) 490.

§ 3673.

History and status of section. *State (ex rel. Cotter) v. District Court*, 49 Mont. 146, 150, 140 Pac. 732.

§ 3674.

Amendment by substituting "plaintiff" for "defendant." See note post, § 6589.

The language of this section, like that of section 3670, ante, is imperative. *Franklin v. Franklin*, 40 Mont. 348, 352, 20 Ann. Cas. 339, 26 L. R. A. (N. S.) 490, 106 Pac. 353.

It is essential to the jurisdiction of the court that the complaint in a divorce case should allege that the plaintiff has been a resident of the state for one year next preceding the commencement of the suit. *Rumping v. Rumping*, 36 Mont. 39, 12

Ann. Cas. 1090, 12 L. R. A. (N. S.) 1197, 91 Pac. 1057.

It is the duty of courts ex officio to inquire into the jurisdictional facts involved in a divorce suit, and not grant a decree for the plaintiff unless he or she has been a resident of the state for one year next preceding the commencement of the action. *Rumping v. Rumping*, 36 Mont. 39, 12 Ann. Cas. 1090, 12 L. R. A. (N. S.) 1197, 91 Pac. 1057.

Editorial Notes.

Character of residence essential to give jurisdiction in divorce proceedings. 12 L. R. A. (N. S.) 1100; 28 L. R. A. (N. S.) 992.

§ 3675.

History and status of section. *State v. District Court*, 49 Mont. 146, 150, 140 Pac. 732.

§ 3677.

In an action for divorce, where the wife moves for suit money, she must show a necessity for the allowance asked; if she has sufficient means of her own to meet the costs of suit, the application should be denied. *Rumping v. Rumping*, 41 Mont. 33, 38, 108 Pac. 10.

Where the wife, sued for a divorce, asks for suit money, the burden is not imposed upon her of showing, affirmatively, that the application is made in good faith and that there is a probability of her success. *Rumping v. Rumping*, 41 Mont. 33, 36, 108 Pac. 10.

In an action for divorce, it is error to allow the wife a larger amount of suit money than is necessary for the purpose to which it is to be applied. *Rumping v. Rumping*, 41 Mont. 33, 38, 108 Pac. 10.

The rules governing allowances for suit money and expenses of litigation are the same as those which apply to allowances made for temporary alimony. *Rumping v. Rumping*, 41 Mont. 33, 38, 108 Pac. 10.

Editorial Notes.

Alimony and its allowance. 60 Am. Dec. 664.

Proper proportion of husband's estate to be awarded to wife as permanent alimony. Ann. Cas. 1913A, 803.

Jurisdiction to avoid temporary alimony, suit money and counsel fees pending appeal. 27 L. R. A. (N. S.) 712.

Award of alimony on constructive service. 16 L. R. A. 234; 50 L. R. A. 583; 59 L. R. A. 178; 9 L. R. A. (N. S.) 593.

Power of court to decree alimony or maintenance to wife independently of divorce proceedings. Ann. Cas. 1913D, 1132.

§ 3678.

Effect of record of another state. See post, § 7919.

Rules of awarding custody of minors. See post, § 3783.

If a husband and wife are divorced in another state, and he is awarded the custody of a minor child, subject to the right of the mother to visit it, but he brings it into this state shortly after the divorce, and the mother afterward obtains a modification of the decree, whereby she is awarded the child's custody, whereupon she sues out a writ of habeas corpus in this state to obtain the child's custody, the court will recognize the paramount importance of its welfare, but it is not bound to determine the question of custody without reference to the amended decree; that decree concludes the rights of the parties, unless there has been a change in the fitness or condition of the mother since the amendment was made; and, under the federal constitution, full faith and credit will be given to such amended decree; in the absence of proof of any such change, the mother must, therefore, be given the custody. *State v. District Court*, 46 Mont. 425, 434, 128 Pac. 590.

The power of the court, in a divorce suit, to make provision for the children is not founded exclusively upon section 3679, post; that section is applicable to cases only in which the ground of divorce is the fault of the husband; under this section, 3768, the court may, in any case, before or after judgment, make such provision for the children as the circumstances require. *Brice v. Brice*, 50 Mont. 388, 147 Pac. 164.

Editorial Notes.

Right of court refusing divorce to

§ 3698. Liability for Acts or Debts of Each Other.

Neither husband nor wife, as such, is answerable for the acts of the other or liable for the debts contracted by the other, provided however, that expenses for necessities of the family and of the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto, they may be used jointly or separately. [Amendment approved March 8, 1915; Laws 1915, p. 285.]

Editorial Notes.

Separate property of wife, liability of. 5 Am. Dec. 589.

Separate estate of married women, when chargeable with their debts. 72 Am. Dec. 513.

Right of husband's creditors to reach fruits or his management of, or services in connection with, wife's separate estate or business. 21 L. R. A. 629; 23 L. R. A. (N. S.) 1124.

Wife, when regarded as a feme sole at the common law. 37 Am. Dec. 709.

award custody of children. Ann. Cas. 1912B, 350.

§ 3679.

Where a divorce has been granted for an offense of the husband, a modification of the decree embodying a provision for the children, there having been no provision made for the wife, ought not to be made except upon good cause shown; the essential facts authorizing or requiring the modification must be established by competent evidence, the burden of proof being upon the applicant. *Brice v. Brice*, 50 Mont. 388, 147 Pac. 164.

That the allowance made to the wife is inadequate is not a ground for a modification of the decree, but is a matter subject to correction on appeal; and the parties are conclusively bound thereby if they acquiesce in the result until the time for appeal has elapsed. *Brice v. Brice*, 50 Mont. 388, 147 Pac. 164.

§ 3692.

This section and section 3741, post, so far as they go, simply declare the mutual obligations of the husband and wife with reference to the support of the family and the education of the children; they enjoin duties upon the living parents, and do not purport to confer vested rights upon the wife and children; hence, where they have been deprived of this support by the death of the father, caused by the wrongful act or neglect of another, they do not have a cause of action, under section 6486, post, against such other person, irrespective of whether the father, if death had not ensued, could have maintained an action in his own behalf. *Melville v. Butte-Balaklava Copper Co.*, 47 Mont. 1, 5, 130 Pac. 441.

Torts, his and her liability for hers. 92 Am. St. Rep. 164; 6 Am. Dec. 106; 83 Am. Dec. 776; Ann. Cas. 1913D, 997; 9 Ann. Cas. 1225; 16 Ann. Cas. 378.

Necessaries, what are. 10 Am. Dec. 462.

Necessaries, liability of wife for. 31 Am. Rep. 697; 33 L. R. A. (N. S.) 426.

Necessaries for which he is chargeable. 98 Am. St. Rep. 627; 65 L. R. A. 529.

Dental charges as necessities for which husband is liable on wife's contract. Ann. Cas. 1912C, 142.

§ 3705.

A married woman, who works for a corporation with the permission of its officers, may recover such compensation for her services as they are reasonably worth. *Trogdon v. Hanson Sheep Co.*, 49 Mont. 1, 6, 139 Pac. 792.

§ 3708.

Conveyance, when not a revocation of a will. See post, § 4751.

Contract of sale is not a revocation of a will. See post, § 4749.

Right to dower. See notes post, §§ 4596 and 4599.

Right of widow who leaves no issue. See note post, § 3716.

Divorce bars dower. See note post, § 5042.

The statutory methods prescribed in this section and in sections 3714, 3716, and 3719, whereby a widow may relinquish her right to dower, are not exclusive; she may release it by an antenuptial contract, reasonable in its term, free from fraud or misrepresentation, and entered into by both parties in good faith. *Hannon v. Hannon*, 46 Mont. 253, 259, Ann. Cas. 1914B, 616, 127 Pac. 466.

The term "conveyance" in this section means a conveyance effective to transfer the title at the time it was made, and may not be construed to include one that has not become effective until after the rights of the widow have attached. *Tyler v. Tyler*, 50 Mont. 65, 144 Pac. 1090.

An option given to purchase land is not a conveyance that will bar dower, if the offer to sell is not accepted until after the death of the husband. *Tyler v. Tyler*, 50 Mont. 65, 144 Pac. 1090.

Editorial Notes.

Validity of antenuptial agreement for release of dower and like interests in property of intended spouse. Ann. Cas. 1914B, 620.

Divorce as barring dower. Ann. Cas. 1914B, 665.

§ 3714.

Relinquishment of dower by antenuptial contract. See note ante, § 3708.

§ 3716.

Relinquishment of dower by antenuptial contract. See note ante, § 3708.

Contract of sale is not a revocation of a will. See post, § 4749.

The right granted to the widow by this section is absolute, and wholly independent of her right to participate in the distribution of the estate as heir of her husband; it attaches to all lands in which she is entitled to dower, as provided in section 3708, ante. *Tyler v. Tyler*, 50 Mont. 65, 144 Pac. 1090.

§ 3726.

Referred to. *Mennell v. Wells* (Mont.), 149 Pac. 954.

§ 3736.

A grant from a husband to the wife will be closely scrutinized. *Koopman v. Mansolf* (Mont.), 149 Pac. 491.

PARENT AND CHILD.

§ 3741.

Construction of section. See note ante, § 3692.

An agreement between the husband and wife, touching the custody and maintenance of the children, will be respected and enforced; but such agreement does not, as against the children, divest either parent of the paramount duty imposed

upon both by law to support and educate them. *Brice v. Brice*, 50 Mont. 388, 147 Pac. 164.

Editorial Notes.

Liability of father for support of children after divorce decree awarding custody to mother but not providing for maintenance. Ann. Cas. 1913C, 296.

§ 3742. Custody of Legitimate Child.

The father and mother of a legitimate, unmarried, minor child are equally entitled to its custody, services and earnings. If either parent be dead, or unable, or refuse to take the custody, or has abandoned his or her family, the other is entitled to its custody, services, and earnings. [Amendment approved March 3, 1915; Laws 1915, p. 90.]

Editorial Notes.

Custody of child, father's right. to. 34 Am. Rep. 698; 40 Am. Rep. 327.

Custody of child, parents' right to, and proceedings to vindicate. 2 Am. St. Rep. 183.

§ 3751.

Right of children over legal age to re-

cover for death of parent. See note post, § 6486.

Right of parent, in action for the wrongful death of his minor child, to recover, as damages, pecuniary benefits expected of his child after majority. See note post, § 6485.

§ 3760a. Duty of Child to Support Parents—Penalty for Nonperformance.

(Section 1.) It is hereby declared and made the duty of every adult child, having the ability so to do, to furnish and provide necessary food, clothing, shelter and medical attendance for his indigent parent or parents, unless in the judgment of the court or jury, he is excused therefrom by reason of intemperance, indolence, immorality or profligacy of such parent.

(Section 2.) Any person violating the provisions of this act shall be deemed guilty of a misdemeanor.

(Section 3.) A civil suit may be instituted and maintained for the enforcement of the provisions of this act by any such child, where there is more than one adult child, or by the parent to whom such support is due, or by the county attorney, and in case there is more than one such child, the court or the jury upon the hearing, is authorized and empowered to apportion the expenses of such support between the adult children, and the court shall enter judgment in accordance with such finding and apportionment; provided that such civil action shall not be construed as barring the arrest and conviction of such person for misdemeanor. [In effect April 27, 1915; Laws 1915, c. 42, p. 61.]

§ 3772. Adoption of Children from Orphan Asylum.

A majority of the board of trustees of any orphans' home or asylum in this state are hereby authorized and empowered to consent to the adoption of any orphan child or child abandoned by its parents by filing their written consent to such adoption, wherein shall be stated that they believe it to be for the best interest of such child that it be adopted by the person or persons making application therefor, which said written consent shall be duly proved or acknowledged by a majority of such board of trustees according to sections 4656 and 4657 of the Revised Codes of Montana of 1907, which said written consent shall be filed with the district court at the time of the application for adoption; provided, that such orphan child, or child abandoned by its parents shall have been in the charge and under the management of said board of trustees of such orphans' home or asylum for a period of one year prior to such adoption and during the time supported wholly, or to the amount of forty per cent, at the expense of such home or asylum. [Amendment approved March 4, 1909; Laws 1909, p. 68.]

§ 3783.

Awarding custody of child, brought from another state, after divorce. See note ante, § 3678.

Editorial Notes.

Matters to be considered in determining the custody of a child on habeas corpus. Ann. Cas. 1914A, 740.

Parents' right to appointment as guardian. 33 L. R. A. (N. S.) 869.

§ 3788.

Guardian as a trustee. See note post, § 7777.

The guardian of minors is an officer of the court, subject to its directions. In re Allard Guardianship, 49 Mont. 219, 222, 141 Pac. 661.

CORPORATIONS.**§ 3808. Purposes for Which Private Corporation may be Formed.**

The purpose for which the private corporations mentioned in the last section may be formed are:

1. The support of public worship.
2. The support of any religious, benevolent, charitable education or missionary undertaking.
3. The support of any literary or scientific undertaking, and maintenance of a library or the promotion of painting, music or other fine art.

4. The encouragement of agriculture and horticulture.
5. The maintenance of public parks, and of facilities for skating and other innocent sports.
6. The maintenance of a club for social enjoyment.
7. The maintenance of a public or private cemetery.
8. The prevention and punishment of theft or willful injuries to property and insurance against such risks.
9. The insurance of human life dealing in annuities, and the insurance of fidelity of persons holding places of public or private trust.
10. The insurance of human beings against sickness or personal injury.
11. The insurance of the lives of domestic animals or their loss or damage.
12. The insurance of property against marine risks.
13. The insurance of property against loss or injury by fire, or any of the elements, or by accident, or by any risk of inland transportation.
14. The transaction of any banking business or trust deposit and security business, and the insurance of the safe keeping of all kinds of personal property.
15. The construction and maintenance of a railroad and of a telegraph line in connection therewith and a street railroad of any kind.
16. The construction and maintenance of any other species of roads and of bridges in connection therewith.
17. The construction and maintenance of a bridge.
18. The construction and maintenance of a telegraph line, telephone or electric light line.
19. The establishment and maintenance of a line of stages.
20. The establishment and maintenance of a ferry.
21. The carriage of property and persons by express.
22. The building and navigation of steamboats and carriage of persons and property thereon.
23. The supply of water to the public.
24. The manufacture and supply of gas, or the supply of light or heat to the public by any other means.
25. The transaction of any mercantile, commercial, industrial, manufacturing, mining, mechanical or chemical business.
26. The transaction of a printing and publishing business.
27. The erection of buildings and the accumulation and loan of funds for the purchase of real estate.
28. The establishment and maintenance of a hotel.
29. The improvement of the breed of domestic animals by importation, sale or otherwise.
30. The transaction of the business of raising, buying and selling cattle, horses and sheep; or
31. The construction of canals, ditches, flumes and other works for conveying water, and reservoirs for storing the same, and the boring of artesian wells.
32. To purchase or otherwise acquire, own, hold, mortgage, pledge, sell, assign, transfer, or otherwise dispose of shares of the capital stock of, or any bonds, securities, or other evidences of indebtedness created by, any other corporation or corporations wherever organized, with all the rights, powers, and privileges of ownership thereof. Provided, however,

that it is not intended hereby to give the right to exercise any of the powers or purposes in this subdivision mentioned in any case where it is forbidden so to do by any provision of the Constitution or statutes of the United States of America or the state of Montana. No corporation must be formed for any other purpose than those mentioned in this section. [Amendment approved March 6, 1909; Laws 1909, p. 146.]

This section authorizes the formation of a corporation to supply water to the public; and section 3819, post, gives further recognition to the same right. *Bailey v. Tintinger*, 45 Mont. 154, 175, 122 Pac. 575.

The only provisions looking to the merging of corporations is section 3896, Revised Codes, substantially duplicated by section 4408, relating to mining corporations, and this act authorizing one corporation to acquire shares of stock in another. *United Missouri River Power Co. v. Yoder*, 41 Mont. 245, 108 Pac. 912.

§ 3810.

Failure to organize, effect of. See note post, § 3892.

§ 3812. Change of Name of Corporation.

That the name of any corporation now organized and existing, or which may hereafter be organized under any of the statutes of this state, relating to corporations may be altered, changed or amended by a vote of the majority of the stockholders of such corporation duly assembled at any regular meeting or at any special meeting duly called for that purpose, and the name of any corporation not having a capital stock may in like manner be changed or amended by a majority vote of all the trustees or directors of such corporation regularly assembled at any regular meeting or at any special meeting duly called for that purpose. [Amendment approved March 6, 1909; Laws 1909, p. 135.]

§ 3816.

Extending term of corporate existence. See post, §§ 3826 and 3907.

The board of directors of a corporation has no inherent power to vote a salary to any director; the power to do so must emanate from the stockholders, from the statute, or from by-laws legally enacted. *Kleinschmidt v. American Min. Co.*, 49 Mont. 7, 23, 139 Pac. 785.

Liability for failure to file annual report. See note post, § 3850.

A corporation that has been engaged in business, apparently in good faith, cannot avoid liability on the ground that its directors, in the conduct of its private affairs, never observed the forms of law in perfecting the organization, and, therefore, that it had ceased to exist as a corporation. *Daily v. Marshall*, 47 Mont. 377, 396, 133 Pac. 681.

Editorial Notes.

Estoppel of defendant in action by corporation to deny plaintiff's corporate existence. *Ann. Cas.* 1914C, 1250.

The directors, the managing officers of a corporation, cannot legally vote themselves compensation for past services. *Kleinschmidt v. American Min. Co.*, 49 Mont. 7, 21, 139 Pac. 785.

If a corporation adopts a by-law providing for the appointment of a secretary, but does not, at any time, fix the compensation, a director, who acts as such secretary, is not entitled to recover on a quantum meruit for past services. *Kleinschmidt v. American Min. Co.*, 49 Mont. 7, 23, 139 Pac. 785.

§ 3818. Articles of Incorporation, What to Contain.

Articles of incorporation must be prepared, setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist, not exceeding forty years.
5. The number of its directors or trustees, which shall not be less than

three nor more than thirteen, and the names and residences of those who are appointed for the first three months and until their successors are elected and qualified.

6. The amount of its capital stock and the number of shares into which it is divided, and if there be more than one class of stock created by the articles of incorporation, a description of the different classes with the terms on which the respective classes are created.

7. If there is a capital stock the amount actually subscribed and by whom.

8. If the stock is assessable it must be so stated. [Amendment approved March 5, 1915; Laws 1915, p. 116.]

Right to form corporation to supply public with water. See note ante, § 3808.

Since 1895, there has been no provision for the issuance of a certificate to a corporation formed prior thereto, but proof of the existence of such a corporation may be made under prior laws; the act of 1909 is not the only rule of evidence in a case of this character; that act applies only to corporations organized since the adoption of the codes. *Billings Realty Co. v. Big Ditch Co.*, 43 Mont. 251, 256, 115 Pac. 828.

§ 3821.

The act of 1909, relative to proof of corporate character, does not apply to corporations organized prior to 1895; until the year last named, there was no provision for the issuance of certificates of incorporation. *Billings Realty Co. v. Big Ditch Co.*, 43 Mont. 251, 256, 115 Pac. 828.

§ 3821a. Evidence of Corporate Existence or Capacity.

The certificate issued by the Secretary of State upon the filing of a certified copy of any articles of incorporation, or a certificate issued by such secretary or state auditor, setting forth that any corporation, domestic or foreign, has filed its articles of incorporation in his office as required by law, shall be admitted in evidence in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such corporation and of its right to transact business in this state, excepting in an action prosecuted by the state in the nature of a quo warranto proceeding. [Approved March 6, 1909; Laws 1909, c. 94, p. 124.]

§ 3821b. Evidence of Corporate Character of National Banks.

The certificate of the comptroller of the currency of the United States issued to any national bank authorizing it to commence business, or a certificate of such comptroller setting forth that such bank is authorized to transact business, shall be admitted in evidence in all courts of this state and shall be prima evidence of the corporate character and capacity of such bank. Provided, however, that this act shall not be so construed as to effect any case now pending in the courts of this state or of the United States. [Approved March 6, 1909; Laws 1909, c. 94, p. 124.]

The statute cannot refer to a corporation organized prior to July 1, 1895, for in terms it applies only to institutions of the kind to which certificates of incorporation have been issued or, what is the same thing, organized since the adoption of the codes. *Billings Realty Co. v. Big Ditch Co.* 43 Mont. 251, 257, 115 Pac. 828.

This section, declaring that a corporation cannot hold property in a county, or maintain an action in relation thereto, unless it has first filed a certified copy of its articles of incorporation in the office of the county clerk, has reference solely to domestic corporations. *Uihlein v. Caplice Com. Co.*, 39 Mont. 327, 336, 102 Pac. 564.

§ 3822.

This section, as well as section 3833, post, recognizes that there may be corporations without a capital stock. *Daily v. Marshall*, 47 Mont. 377, 390, 133 Pac. 681.

Editorial Notes.

When subscriber to stock becomes stockholder. *Ann. Cas.* 1913C, 418.

§ 3823.

Sections applicable to domestic corporations. See notes post, §§ 3895 and 3908.

§ 3824.

There can be no presumption that the capital stock of a corporation shall be deemed to be paid for in money. *State v. Clements*, 37 Mont. 314, 319, 96 Pac. 498.

The capital stock of a foreign corporation may consist, in whole or in part, of something other than money. *State v. Clements*, 37 Mont. 314, 319, 96 Pac. 498.

§ 3825. Manner of Forming Corporations.

At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business; of digging ditches, of building flumes or running tunnels; of purchasing, holding, developing, improving, using, leasing, selling, conveying or otherwise disposing of water powers and the sites thereof and lands necessary or useful therefor, or for the industries and habitations arising or growing up, or to arise or grow up, in connection with or about the same; of purchasing, holding, laying out, platting, developing, leasing, selling, dealing in, conveying, or otherwise using or disposing of town sites or towns or the lots, blocks or subdivisions thereof, or lots, blocks or subdivisions in any town, village, or city; or of carrying on any other branch of business designed to aid in the industrial or productive interests of the country and the development therefor of one or more of the aforesaid branches of business, or for any of the purposes for which private corporations may be formed, as set forth in section 3808 (393) of this code, as amended by the foregoing section, or as the same may be hereafter amended, must prepare, sign, acknowledge, and file articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof certified by the county clerk, with the Secretary of State, whereupon the Secretary of State must issue to the corporation over the great seal of the state, a certificate that a copy of the articles, containing the required statement of facts has been filed in his office. Thereupon the persons signing the articles and their associates and successors, shall be a body politic and corporate by the name stated in the certificate, and for a term of forty years, unless in the articles of incorporation otherwise stated, or in this code otherwise specially provided, but in no case where not otherwise specially provided in this code, must such term exceed forty years; provided, however, that no articles of incorporation shall be accepted and filed by the Secretary of State which designate a name of the proposed corporation which is the same as that of any existing domestic corporation, or which in the judgment of the Secretary of State is so similar to the name of any existing domestic corporation as to mislead or confuse persons dealing with such corporations; and provided further, that nothing herein shall affect the present term of existence of any corporation heretofore incorporated under this section for a period of forty years. [Amendment approved March 6, 1909; Laws 1909, p. 148.]

The only acts by which the incorporators notify the public of the creation of a corporation are the records required by this section; when these have been completed, the corporation becomes, as to those who deal with it, a living, active, responsible entity. *Daily v. Marshall*, 47 Mont. 377, 394, 133 Pac. 681.

When a corporation has been regularly brought into existence, it is not deprived of the right to exercise corporate functions by the failure of the directors, designated by the statute, to perfect the organization by taking steps subsequent to the issuance of the certificate by the Secretary of State.

Daily v. Marshall, 47 Mont. 377, 391, 395, 133 Pac. 681.

The failure of the directors or officers of a corporation to do those acts, such as are indicated in this section, which are required as conditions precedent, results ipso facto in forfeiture; but an omission to perform conditions subsequent, such as are indicated in section 3892, post, merely expose the corporation to the peril of dissolution upon inquisition by the state; until the forfeiture has been judicially declared at the instance of the state, the corporate existence continues. *Daily v. Marshall*, 47 Mont. 377, 394, 133 Pac. 681.

§ 3826. Extension of Term of Existence and Change in Capital Stock.

Any corporation or company heretofore formed either by special act or under the general law, and now existing, or any company which may

be formed under this chapter, or which has elected or may elect to continue its existence under the provisions of the codes of Montana, may increase or diminish its capital stock, by complying with the provisions of this chapter, to any amount which may be deemed sufficient and proper for the purpose of the corporation, and may also extend its business to any other branch named in sections 3808 (393) or 3825 of this chapter, as amended by the foregoing section, or as the same may be hereafter amended, and may also extend the term of its existence, subject to the provisions and liabilities of this chapter; provided, however, that no corporation shall have power under this chapter to extend the term of existence for a period longer than will make the terms of existence of said corporation longer in all than forty years from the date of its original incorporation; and before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital; and any existing company heretofore formed under any special act may come under and avail itself of the provisions, and thereupon such company, its officers and stockholders, shall be subject to all restrictions, duties and liabilities of this chapter. [Amendment approved March 6, 1909; Laws 1909, p. 149.]

If a corporation, whose life is limited, is entitled to continue its existence, it may do so, by taking the necessary steps during the life of the corporation, but any steps taken after its life expires are ineffective. *Merges v. Altenbrand*, 45 Mont. 355, 362, 123 Pac. 21.

Where a corporation whose life was limited to twenty years, had authority, under existing laws, to continue its existence, though it did not elect to do so, it had the right to avail itself of that privilege, granted by this section, as amended in 1909.

Merges v. Altenbrand, 45 Mont. 355, 362, 123 Pac. 21.

A corporation does not die by reason of the expiration of the time limit fixed by its charter, provided its members exercise the right to extend the term by the method set forth in the statute. *Merges v. Altenbrand*, 45 Mont. 355, 361, 123 Pac. 21.

Editorial Notes.

Extension of life of corporation as continuation of old or creation of new corporation. Ann. Cas. 1914B, 390.

§ 3826a. Acquisition of Stock or Securities of Other Corporations.

Any corporation, formed under the laws of the territory or state of Montana, whether previous to or since the taking effect of the codes on July 1, 1895, or hereafter to be formed, may purchase or otherwise acquire, own, hold, mortgage, pledge, sell, assign, transfer or otherwise dispose of shares of the capital stock of, or any bonds, securities or other evidence of indebtedness created by, any other corporation or corporations, wherever formed or organized, and while such owner may exercise all the rights, powers and privileges of ownership, including the right to vote upon such stock; provided, however, that it is not intended hereby to give the right to exercise any of the powers or purposes in this subdivision mentioned in any case where it is forbidden so to do by any provision of the Constitution or statutes of the United States of America or the state of Montana.

All acts and parts of acts in conflict with the provisions of this act [§§ 3808, 3825, 3826, 3826a herein] are hereby repealed. Provided, however, that nothing in this act shall be construed as repealing any of the provisions of House Bill No. 310, passed by the 11th Legislative Assembly, known as the Anti-Trust Bill. [Approved March 6, 1909; Laws 1909, p. 150.]

Editorial Notes.

Right of corporation to acquire own stock. Ann. Cas. 1914B, 1016.

§ 3827.

The provisions of this section, requiring a six weeks' notice, have reference to other corporations than state banks; regulations as to them are prescribed in section 3907, post. *State v. Yoder*, 39 Mont. 202, 206, 207, 103 Pac. 499.

The provisions of this section and of section 3826, ante, and section 3828, post,

touching the manner in which a corporation may extend its existence, do not apply to state banks; such banks are governed, in this respect, by section 3907, post. *State v. Yoder*, 39 Mont. 202, 207, 103 Pac. 499.

§ 3828.

Extending term of corporate existence. See ante, §§ 3815, 3816, and note, § 3826, and post, § 3907.

§ 3828a. Validation of Articles of Incorporation.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That whenever heretofore any corporation, whether formed under the laws of the territory or state of Montana or the laws of any other state or territory, has filed in the office of the secretary of the territory or state of Montana, or of the county clerk of any county in said territory or state, or of both, any copy of its articles of incorporation, or charter, or of any statute or statutes creating such corporation or defining its powers, in conformity to the requirements of the laws of Montana then in force, which copy was a true and correct copy of its said articles, or of its said charter, or of said statute or statutes, but such copy or copies were not properly, or at all, certified as true and correct by the legal custodian of the original or originals thereof, such uncertified or defectively certified but true and correct copy or copies are hereby accepted, on behalf of the state of Montana as a substantial and satisfactory compliance with the requirements of the laws of Montana then in force and such filings are hereby declared valid and lawful in all respects and for all purposes to the same extent and with the same legal effect as if such true copy or copies had been fully and duly certified, prior to being filed, by the legal custodian of the original or originals thereof; provided that, before any such corporation shall have the benefits of this act and before such defective filings shall be cured, as hereby provided, and become operative as lawful filings from the date of the original filing thereof, such corporation shall, within six months from the date of the final passage of this act, file in the office of the Secretary of State of the state of Montana and in such other public office or offices as are now designated by law as the place or places where such documents would now be filed if any such corporation were now for the first time making such filings, file a true and correct copy of its said articles, charter or statute or statutes, and all amendments thereof, duly certified as true and correct and complete copies thereof, duly certified as such by the present lawful and official custodian of the originals thereof.

(Section 2.) That whenever any such corporation as is referred to in the first section hereof shall have complied with the provisions of said section and made the filings thereby required, said corporation shall be deemed, and is hereby declared, to have fully complied with all of the requirements of the laws of the territory and state of Montana and of the Constitution and laws of the state of Montana, concerning such filings, and is hereby vested with all the rights, privileges and immunities which would have been enjoyed by it if it had in all respects complied strictly at the time of its first filings with all the requirements of the law then in force and applicable thereto, all such rights, privileges and immunities being

hereby conferred as of the date of the first filings of such true but uncertified copies.

(Section 3.) That upon complying with the provisions of sections 1 and 2 hereof, any such corporation shall be and hereby is released from the payment of any fees, or other charges, to the Secretary of the State of Montana or to any county clerk of any county in Montana, which may or might have become due under or by reason of the provisions of any other laws of this state; provided that, before the acceptance and filing of said new certified copies by the Secretary of State, a filing fee of \$5 shall be paid to him by or on behalf of said corporation and that any county clerk in whose office any such new filings shall be made under the provisions of this act, shall likewise require to be paid to him, by or on behalf of said corporation, a filing fee of one dollar. [Approved March 6, 1911; Laws 1911, c. 115, p. 248.]

§ 3828b. Increase or Decrease of Capital Stock—How Accomplished.

(Section 1.) The number of shares into which the capital stock of any private corporation now organized and existing, or which may hereafter be organized under any of the laws of Montana, relating to private corporations, is divided, may be increased or decreased by a two-thirds vote of all of the stock of such corporation issued and outstanding, represented at any special meeting of the stockholders of said corporation, called and held as hereinafter provided.

(Section 2.) Whenever the board of directors of any private corporation, mentioned in the next preceding section, shall decide to call a special meeting of the stockholders for the purpose of determining whether or not the number of shares into which the capital stock of such corporation is divided, shall be either increased or decreased, it shall be the duty of such directors to publish a notice, signed by at least a majority of them, in a newspaper in the county in which such corporation shall have its principal place of business, if any shall be published therein, for at least four successive weeks, and to deposit, or cause to be deposited, a written or printed copy of such notice in the postoffice of the town or city in which such corporation shall have its principal place of business, addressed to each stockholder at his usual place of residence, as the same shall appear from the stock books of such corporation, postage prepaid, at least two weeks previous to the day for holding such meeting, which notice shall specify the object of the meeting, the time and place when and where such meeting shall be held, and the number of shares into which it shall be proposed to divide the capital stock of such corporation. If no newspaper is published in such county, it shall not be necessary to publish such notice. A vote of at least two-thirds of all the shares of stock of such corporation, issued and outstanding, and represented at the meeting, either in person or by proxy, shall be necessary to either increase or decrease the number of shares into which the capital stock of such corporation is divided.

(Section 3.) If at the time and place specified in the notice provided for in the next preceding section, stockholders shall appear in person or by proxy, representing not less than two-thirds of all the shares of stock of such corporation issued and outstanding, they shall organize by choosing one of the directors of such corporation chairman of the meeting, or, if no director of such corporation be present, then by choosing a stockholder of such corporation chairman of the meeting, and also a suitable person for

secretary, and shall proceed to a vote of those present in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of the shares of the capital stock of such corporation have been voted in favor of said increase or decrease of the number of shares into which the capital stock of such corporation is divided, a certificate of the proceedings, showing a compliance with the provisions of this act, the number of shares into which the capital stock of such corporation is divided, and the number of shares to which the capital stock of such corporation is by such proceedings either increased or decreased, shall be made out, signed by the chairman of such meeting, and verified by the affidavit of said chairman, and be countersigned by the secretary of such meeting, and such certificate shall be acknowledged by the chairman as conveyances of real estate are acknowledged under the laws of the state of Montana, and filed in the office of the county clerk of the county in which the principal place of business of such corporation is situated, and a copy thereof, certified by the county clerk shall be filed with the Secretary of State, and when so filed and recorded, the number of shares into which the capital stock of such corporation is divided shall be increased or decreased, as the case may be, to the number specified, in such certificate.

(Section 4.) If such increase or decrease of the number of shares be so authorized, as in this act provided, and so certified and filed as in this act provided, such corporation shall thereupon issue to each stockholder certificates for as many shares of the new stock as equal to par value the shares of the old stock held by him, upon surrender and cancellation of such old stock.

(Section 5.) This act [§§ 1 to 6 hereof] does not authorize the increase or reduction of the amount of the capital stock of such corporation and shall not be construed to alter the existing law in relation to the increase or reduction of the amount of capital stock of any private corporation.

(Section 6.) All acts and parts of acts in conflict herewith are hereby repealed. [Approved March 8, 1915; Laws 1915, c. 100, p. 225.]

§ 3829a. Classification of Directors as to Term of Office.

Any private corporation, now organized and existing, or which may hereafter be organized under the laws of Montana, may, by making provision therefor in its by-laws as originally adopted, or as amended, classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms, provided that no class shall be elected for a shorter period than one year, or for a longer period than three years, and that the term of office of at least one class shall expire each year. If the provision for such classification of directors is not made in the by-laws originally adopted, it may be incorporated in such by-laws by amendment, as other amendments to the by-laws may be legally made. [New section adopted March 3, 1915; Laws of 1915, p. 86.]

§ 3830. Election of Directors.

The directors must be, except as hereinafter provided, elected annually by the stockholders or members, and if no provision is made by the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as provided in section 3829; but by so providing in its by-laws

as originally adopted, or as the same may be amended, any corporation organized under this act, or heretofore organized under the laws of Montana, may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms, provided that no class shall be elected for a shorter period than one year, or for a longer period than three years, and that the term of office of at least one class shall expire each year. [Amendment approved March 3, 1915; Laws 1915, p. 87.]

§ 3833.

Corporations with capital stock. See note ante, § 3822.

Failure to organize, effect of. See note post, § 3892.

It is not the universal rule that a corporation must act exclusively through its board of directors; formal action is often dispensed with, even in the most important matters, where all the members of the corporation, including the shareholders and directors, are present and concur although there is no formal vote either of the shareholders or of the directors; in such cases, the presumption is that the action taken has been ratified by the board of directors, although it, in fact, took no affirmative action in the matter. *Fitzpatrick v. O'Neill*, 43 Mont. 552, 563, Ann. Cas. 1912C, 296, 118 Pac. 273.

Under this section, a corporation for profit must have a capital stock; and, in an action against a concern, an allegation that it was organized and is operated for profit, implies that, in order to have any legal existence, it must have a capital stock. *Daily v. Marshall*, 47 Mont. 377, 133 Pac. 681.

In requiring the directors of a corporation, having capital stock, to be stockholders, the legislature intended that such officers should be bona fide, not ostensible, owners of stock; the legislature did not intend it to be possible for a single person, through his own employees and agents, act-

ing as his "dummies," to conduct his individual business under the guise of a corporation, with all of the attendant privileges and immunities, and thus escape personal liability altogether. *Barnes v. Smith*, 48 Mont. 309, 318, 137 Pac. 541.

The issuance of stock, with the unanimous consent of the stockholders, at a meeting where every share of outstanding stock was represented, and where a majority of the directors were present and assented, is valid, though the directors took no formal action, particularly where the stock has subsequently been twice voted, without objection, at stockholders' meetings, the other directors being present. *Fitzpatrick v. O'Neill*, 43 Mont. 552, 565, Ann. Cas. 1912C, 296, 118 Pac. 273.

Whatever is necessarily implied, or reasonably to be inferred, from the allegations of a complaint against a corporation, is to be taken as directly averred. *Daily v. Marshall*, 47 Mont. 377, 391, 133 Pac. 681.

The directors of a corporation cannot abdicate their duties nor permit others to act in their stead for the corporation or the stockholders; the property of a corporation cannot be saddled with a lien imposed without the consent either of the directors or of a majority of the stockholders. *Deschamps v. Loisel*, 50 Mont. 565, 148 Pac. 335.

Editorial Notes.

Necessity of action, by directors, to validate corporate act. Ann. Cas. 1912C, 300.

§ 3834. Election of Directors and Adoption of By-laws at First Meeting.

Directors must be elected and by-laws adopted at first meeting. At the meeting at which the by-laws are adopted, or at such subsequent meeting as may be then designated, directors must be elected, and unless otherwise provided by the by-laws as originally adopted, or as amended, shall hold their offices for one year and until their successors are elected and qualified. [Amendment approved March 3, 1915; Laws 1915, p. 87.]

§ 3835.

Before the stockholders of a corporation can go into court, they must first exhaust their remedy within the corporation itself; if they hold a majority of the stock, they may control the election of directors, under this section; or, if they control two-thirds of the stock, they may remove an objectionable director, under section 3838, post; and, because of the power and au-

thority thus lodged in the stockholders, courts of equity refuse to listen to their complaints, unless it appears that the situation of the parties is such that they can not secure relief from the corporate authorities. *Brandt v. McIntosh*, 47 Mont. 70, 73, 130 Pac. 413.

Before minority stockholders can be heard to prosecute a suit founded on a right of action existing in the corporation itself,

such as one to set aside a sheriff's sale to protect property owned by the corporation, the complaint fails to state a cause of action, where it does not allege that the plaintiffs are minority stockholders; where it does not show the inability of the plaintiffs to secure relief within the corporation itself; and where it does not allege any demand for relief made upon, and refusal by, the board of directors, or why a demand would have been useless. *Brandt v. McIntosh*, 47 Mont. 70, 73, 130 Pac. 413.

Editorial Notes.

Irrevocable proxies. 56 Am. St. Rep. 138.

Elections, voting by proxy. 27 Am. Dec. 60; 29 L. R. A. 844.

Rights and powers of proxy of stockholder. Ann. Cas. 1912C, 865.

§ 3836.

Directors of railroad corporation, minimum number. See note post, § 4274.

Failure to organize, effect of. See note post, § 3892.

Power of directors to vote themselves compensation for past services. See note ante, § 3816.

When contract, to bind corporation need not be expressed in writing. See note post, § 5449.

Act of agent as act of principal. See note post, § 5449.

If three directors only are elected, instead of five, provided for in the articles of incorporation, the two remaining places

are simply vacant; the three constitute a quorum, and a majority of such quorum may bind the corporation, at least, as against an attack by one outside of the corporation, or by the state. *Great Falls etc. Ry Co. v. Ganong*, 43 Mont. 54, 56, 136 Pac. 390.

Notwithstanding this section, the general executive officer of a corporation may, specifically or by implication, be authorized by the directors thereof to conduct its business under their directions. *Edwards v. Plains L. & W. Co.*, 49 Mont. 535, 547, 143 Pac. 962.

§ 3848.

Failure to organize, effect of. See note post, § 3892.

The only object of a written notice of a special meeting is, that the directors shall have an opportunity of being present at the meeting and taking part in its proceedings. *O'Rourke v. Grand Opera House Co.*, 47 Mont. 459, 467, 133 Pac. 965.

A special meeting of the board of directors of a corporation is valid, and the proceedings are binding, though the meeting was called without a notice in writing, where all of the directors attended and participated, without objection, in the dispatch of the business on hand. *O'Rourke v. Grand Opera House Co.*, 47 Mont. 459, 466, 133 Pac. 965.

Editorial Notes.

Meetings, special, notice to attend when may be omitted. 3 Am. St. Rep. 69.

§ 3850. Annual Statement of Corporations.

Every corporation, having a capital stock, except banks, trust companies and building and loan associations, shall annually, within twenty days from and after the thirty-first day of December, file, in the office of the clerk of the county in which the principal place of business of such corporation is situated, a report which shall state the amount of the capital stock, the proportion thereof actually paid in and the amount thereof actually paid in cash and the amount issued, if any, in payment of property purchased and the amount of existing debts and also the names and addresses of the directors or trustees and of the president, vice-president, general manager and secretary of the corporation. Such report shall be signed by the president and a majority of the directors, inclusive of the president, secretary or treasurer of such corporation. In the absence, or inability to act, of the president, the vice-president may sign and verify such report. If any such corporation shall fail to file such report, directors of the corporation shall be, jointly and severally, liable for all debts or judgments of the corporation then existing, or which may thereafter be in anywise incurred until such report shall be made and filed; provided, however, that if within ten days after such failure a director, or directors, shall make and file, as aforesaid, an affidavit or affidavits, stating that the failure was due to no fault or neglect of his or theirs, and stating, also, that, within the said twenty days he or they requested the president or

sufficient number of the other directors, whose residence was known to the affiants, to join them in making report, such director, or directors, shall not be liable under this section. If the required report be made and filed after the time herein specified, the directors shall not, on account of the prior failure to make report, be liable for the debts thereafter contracted. Where such corporation, on account of insolvency or for any other reason, has ceased to be a going concern and has ceased to voluntarily incur financial obligations, the directors may include a statement to that effect in their report, giving the reasons for the cessation of the corporate activities of such corporation, and, after two annual reports have been filed, the directors shall not be liable for a failure to file annual reports during such time as the disability of such corporation shall continue. [Amendment approved March 11, 1909; Laws 1909, p. 217.]

Who cannot question corporate existence. See ante, § 3810.

This section is to be strictly construed; it is penal only in the sense that it creates a liability not known to the common law. *Daily v. Marshall*, 47 Mont. 377, 398, 133 Pac. 681.

This section is not unconstitutional as casting "liabilities and burdens upon domestic corporations from which foreign corporations are exempt"; the penalty for failure to file the annual report is placed upon the officers and directors and not upon the corporation. *Daily v. Marshall*, 47 Mont. 377, 398, 133 Pac. 681.

The constitutional provision prohibiting excessive fines is a penalty exacted by the state for a criminal offense; it has no application to the penalty imposed by this section, as amended. *Daily v. Marshall*, 47 Mont. 377, 399, 133 Pac. 681.

If an active director of a corporation, that has been engaged in business, apparently in good faith, is sued and sought to be held for his failure, as president and director of the corporation to file or have filed, the annual report required by this section, he cannot escape personal liability hereunder by denying the existence of the corporation, on the ground that the forms of law had never been observed in perfecting its organization, whether he was properly chosen as director or not. *Daily v. Marshall*, 47 Mont. 377, 396, 133 Pac. 681.

A plaintiff, who seeks to hold the directors of a corporation liable for a failure to comply with the provisions of this section, as amended in 1909, concerning the filing of the annual report therein specified, must allege facts and circumstances clearly showing that the liability has attached; nothing is to be presumed in favor of the pleader. *Daily v. Marshall*, 47 Mont. 377, 390, 133 Pac. 681.

The complaint must show the failure to comply with statute if a plaintiff would avail himself of the latter to enforce the liability of officers of a corporation for not filing the annual report. *Daily v. Marshall*, 47 Mont. 377, 389, 133 Pac. 681.

§ 3853.

Editorial Notes.

Alteration of stockholders' liability as impairment of the obligation of contract. L. R. A. 1915B, 797, 811.

Stockholders, liability for debts of corporations. 49 Am. Dec. 308, 99 Am. Dec. 432.

Stockholders, actions against for debts of corporation. 43 Am. Dec. 694.

Stockholders, liability of. 9 Am. Dec. 96.

Judgment against corporation, effect of on stockholders. 97 Am. St. Rep. 463.

Statute of limitations in actions against officers and stockholders. 96 Am. St. Rep. 972.

Stockholders, liability of, enforcement of in other states. 37 Am. St. Rep. 163.

Stockholders, liability of to the creditors of the corporation. 3 Am. St. Rep. 806.

Liability of holders of stock of as collateral, for corporate debts. 1 Am. St. Rep. 783; 36 L. R. A. 139; 19 L. R. A. (N. S.) 249.

Liability of transferee of stock for corporate debts. 3 Ann. Cas. 1120; Ann. Cas. 1914B, 754.

Liability for corporate debts of stockholder who transfers stock to escape liability. 6 Ann. Cas. 428; 18 Ann. Cas. 341.

Liability of married woman as stockholder. Ann. Cas. 1912C, 400.

Voluntary payment by stockholder of full quota of liability to creditor or creditors as discharging him from further liability. Ann. Cas. 1913D, 71.

§ 3855.

Evidence showing that a vendee of stock in a mining corporation, of which the vendor was the equitable owner only, and the transfer of which was sought on

the books of the company, was not an innocent purchaser without notice. *Barker v. Montana etc. Min. Co.*, 35 Mont. 351, 360, 89 Pac. 66.

Editorial Notes.

Stock, duty of corporations to transfer on their books. 136 Am. St. Rep. 1027; 67 L. R. A. 656; 20 L. R. A. (N. S.) 996.

Stock, specific performance of contracts for the sale of. 135 Am. St. Rep. 689.

Stock, transfers of, to what extent may be restricted. 57 Am. St. Rep. 379.

Estoppel to question transfer of stock without authority of owner. Ann. Cas. 1913E, 1173.

§ 3887.

Individual stockholder as voting unit in dissolution of corporations. See post, § 7324.

This section makes the individual stockholder, and not the share of stock, the unit of voting power; hence, a change of nonassessable stock to assessable stock, made with the consent of only ninety-six out of three hundred and one stockholders, is without effect, though it was made by those owning more than three-fourths of the company's stock, and an assessment levied in pursuance thereof is void. *Smith v. Iron Mountain Tunnel Co.*, 46 Mont. 13, 19, Ann. Cas. 1914B, 551, 125 Pac. 649.

Editorial Notes.

Individual stockholder, or share of stock, as unit of voting power in corporation. Ann. Cas. 1914B, 554.

§ 3889. Powers of Corporations.

Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.
2. To sue and be sued, in any court.
3. To make and use a common seal, and alter the same at pleasure.
4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require.
5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.
6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.
7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.
8. To create two or more kinds of stock of such classes with such designation, preferences and voting powers, or restrictions or qualifications thereof, as shall be stated or expressed in the articles of incorporation and the power to increase or decrease the stock, as in this code elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual

§ 3888.

Reservation of power to repeal. See ante, § 3809.

The reserved power of the state, to amend the laws under which a corporation is organized, may be exercised, not only to alter the contract as it exists between the state and the corporate entity, but to alter the contract existing between the corporation and its stockholders, and also the contract as between the stockholders themselves; a law effecting such change is not unconstitutional on the ground that it impairs the obligation of a contract. *Somerville v. St. Louis M. & M. Co.*, 46 Mont. 268, 275, L. R. A. 1915B, 811, 127 Pac. 464.

A law providing for a change in the limited liability of the stockholders of a corporation, by authorizing nonassessable stock to be made assessable, upon such reasonable terms as the legislature may prescribe, is not unconstitutional as impairing the obligation of a contract. *Somerville v. St. Louis M. & M. Co.*, 46 Mont. 268, 276; L. R. A. 1915B, 811, 127 Pac. 464.

The two-thirds vote has reference to outstanding, voting stock, exclusive of that remaining in the treasury. *Somerville v. St. Louis M. & M. Co.*, 46 Mont. 268, 274; L. R. A. 1915B, 811, 127 Pac. 464.

Editorial Notes.

Legislative power over corporations. L. R. A. 1915B, 388.

capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the stock certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, semi-annually, or annually, before any dividend shall be set apart or paid in the common stock, and such dividend may be made cumulative. Unless its original or amended articles of incorporation shall so provide, no corporation shall create preferred stock. [Amendment approved March 5, 1915; Laws 1915, p. 117.]

Under this section and section 3890, post, a mercantile corporation has no power to enter into contracts or obligations of guaranty. *Kellogg-Mackay Co. v. Havre Hotel Co.*, 199 Fed. 727, 735, 118 C. C. A. 165.

Every moneyed transaction between the directors of a corporation and the company as an entity is not to be branded as fraudulent; contracts by which they become creditors of the company are valid and enforceable, if made in good faith and for the company's benefit. *Tatem v. Eglanol Min. Co.*, 42 Mont. 475, 491, 113 Pac. 295.

Propriety of applying the statutory rules governing a trustee and cestui que trust, to the relationship existing between the directors of a corporation and the company itself and its stockholders. *Tatem v. Eglanol Min. Co.*, 42 Mont. 475, 489, 113 Pac. 295.

When the steps required by section 3825, ante, shall have been observed, the corporation comes into existence; and, while the failure to observe the requirements of the statute as to the adoption of by-laws, the subsequent election of directors, the election of officers, and the like, as indicated in section 3829 et seq., ante, renders the franchises and privileges subject to forfeiture, such failure does not ipso facto work a dissolution, nor permit a question to be made as to the corporate capacity, in a collateral way by any private citizen, in a controversy between him and the corporation; in other words, after the corporation has come into existence, as provided by section 3825, ante, it continues to exist, for the period fixed by the statute, or until, by affirmative action, the state has had a forfeiture judicially declared. *Daily v. Marshall*, 47 Mont. 377, 393, 133 Pac. 681.

In questioning the existence of a corporation, it is, with respect to collateral attack, unimportant whether it was a corporation de jure or de facto; the rule denying the right to collateral attack applies to the one as well as to the other. *Daily v. Marshall*, 47 Mont. 377, 396, 133 Pac. 681.

Editorial Notes.

Power of corporations to give evidence of indebtedness and security therefor. 111 Am. St. Rep. 309.

Contracts forbidden by their charters or other statutes. 51 Am. Dec. 341.

Ultra vires contracts of corporations. 13 Am. Dec. 108; 70 Am. St. Rep. 156.

§ 3895.

Sections applicable to domestic corporations. See note ante, § 3823, and note post, § 3908.

This section furnishes no authority for the exercise of the right of eminent domain by a foreign corporation. *Helena Power etc. Co. v. Spratt*, 35 Mont. 108, 130, 10 Ann. Cas. 1055, 8 L. R. A. (N. S.) 567, 88 Pac. 773.

This section applies only to domestic corporations, and furnishes no authority for the exercise of the right of eminent domain by a foreign corporation. *Helena P. T. Co. v. Spratt*, 35 Mont. 108, 130, 10 Ann. Cas. 1055, 8 L. R. A. (N. S.) 567, 88 Pac. 773.

By the act of 1907, empowering foreign corporations to exercise the right of eminent domain, the legislature intended to give such corporations the same power in this respect as domestic corporations enjoy. *Spratt v. Helena Power etc. Co.*, 37 Mont. 60, 79, 94 Pac. 631.

§ 3896.

Authority for consolidation of corporations. *United Missouri Power Co. v. Yoder*, 41 Mont. 245, 248, 108 Pac. 912.

§ 3902.

The presumption is, that all entries made in the books of a corporation for profit, against the president and controlling stockholder, are rightfully made; and, in a suit, one object of which is to obtain an accounting against him, arising out of his fraudulent purchase of certain shares of the corporate stock, from the executor of a deceased owner, such books are admissible against him and his representative. *Smith v. Moore*, 199 Fed. 689, 692, 697, 113 C. C. A. 127.

§ 3905.

After a corporation has been lawfully organized, it continues to exist until its life expires by limitation, as prescribed in section 3825, ante; or, until it has been dissolved in one of the modes prescribed by this section, 3905. *Barnes v. Smith*, 48 Mont. 309, 316, 137 Pac. 541.

After a corporation has been lawfully organized, section 3892, ante, prohibits its character as such from being inquired into collaterally at the instance of a private citizen in a controversy between him and it; and section 6944, post, prevents its legal capacity from being brought into question, even by the state, except for one of the causes prescribed by the statute. *Barnes v. Smith*, 48 Mont. 309, 316, 137 Pac. 541.

A corporation is dissolved by the expiration of the time limited by its charter; and it can thereafter exercise no powers except those conferred by law to enable it to wind up its affairs. *Merges v. Altenbrand*, 45 Mont. 355, 362, 123 Pac. 21.

§ 3906.

If a corporation is dissolved by the expiration of the time limited by its charter, it is improper for the court to take the property of the corporation, though of great value, from the acting trustees, and appoint a receiver, when they are not charged with incompetency, or improvidence, or wrongdoing, but with merely acting upon the erroneous assumption that the corporation is still in existence; this alone is not sufficient to justify the appointment of a receiver. *Merges v. Altenbrand*, 45 Mont. 355, 366, 123 Pac. 21.

BANK AND TRUST COMPANIES.**§ 3909. Bank Act in General.**

(Section 1.) This act shall be known as the bank act and shall be applicable to all corporations specified in section 2 hereof. [Amendment approved March 6, 1915; Laws 1915, p. 118.]

§ 3910. Institutions to Which Act is Applicable.

(Section 2.) The word "bank," as used in this act, shall be construed to mean any corporation which shall have been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business as hereinafter defined. The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business shall be deemed to be doing a commercial or savings bank business whether such deposit is made subject to check or is evidenced by a certificate of deposit, a pass-book, a note or other receipt; provided, that nothing herein shall apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of his principal. It shall be unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state, except by means of a corporation duly organized for such purpose. Banks are divided into the following classes: (a) Commercial banks,

Editorial Notes.

Dissolution, effect of. 12 Am. Dec. 239, 7 Am. St. Rep. 717, 69 L. R. A. 124.

Dissolution of corporations, effect of upon debts and pending actions. 40 Am Dec. 737.

Right of majority of stockholders to dissolve going business corporation against protest of minority. Ann. Cas. 1913A, 375.

§ 3907.

Extending term of corporate existence. See ante, §§ 3815, 3816, and 3826.

Increase, by state bank, of its capital stock. See note post, § 3918.

The officers of a state bank, in proceeding under this section to extend the term of its existence, are not required to give the six weeks' notice of their meeting prescribed by section 3827, ante. *State v. Yoder*, 39 Mont. 202, 207, 103 Pac. 499.

§ 3908.

Sections applicable to domestic corporations. See notes ante, §§ 3823 and 3908.

This section is applicable solely to domestic corporations, and does not furnish any authority for the exercise of the right of eminent domain by a foreign corporation. *Helena P. T. Co. v. Spratt*, 35 Mont. 108, 130, 10 Ann. Cas. 1055, 8 L. R. A. (N. S.) 567, 88 Pac. 773.

This section furnishes no authority for the exercise of the right of eminent domain by a foreign corporation. *Helena Power etc. Co. v. Spratt*, 35 Mont. 108, 130, 10 Ann. Cas. 1055, 8 L. R. A. (N. S.) 567, 88 Pac. 773.

(b) savings banks, (c) trust companies, (d) investment companies; provided further, however, that this act shall not apply to any branch bank or banks heretofore established under authority of law and now doing business, nor to any person, firm or association now doing a private banking business; provided, however, that said private banks hereinabove referred to shall come under all of the provisions of section 50 of this act; provided further, however, that this act shall not apply to any investment company or corporation, heretofore established under authority of law, not accepting, receiving and holding money on deposit. [Amendment approved March 6, 1915; Laws 1915, p. 118.]

One who gives the cashier of a bank, at the latter's request, an accommodation note for a large amount, it being evident that the cashier is projecting some fraud, and that the cashier's purpose is to violate this section, is liable on the note though he pleads a want of consideration and the

cashier's agreement not to enforce the note against him; furthermore, it is a penal offense to subscribe or exhibit false papers with intent to deceive the state bank examiner. *State Bank v. Forsyth*, 41 Mont. 249, 28 L. R. A. (N. S.) 501, 108 Pac. 914.

§ 3911. Number of Persons Necessary to Form Corporation.

(Section 3.) Corporations may be formed by any number of natural persons not less than three under the laws of this state to conduct, as provided in this act and not otherwise, any one, or more, or all of the business mentioned in section 2 of this act. [Amendment approved March 6, 1915; Laws 1915, p. 119.]

§ 3912. Commercial Bank Defined.

(Section 4.) The term "commercial bank," when used in this act, means any bank authorized by law to receive deposits of money, deal in commercial paper, or to make loans thereon, and to lend money on real or personal property, and to discount bills, notes, or other commercial paper, and to buy and sell securities, gold and silver bullion, or foreign coins, or bills of exchange. [Amendment approved March 6, 1915; Laws 1915, p. 119.]

§ 3913. Savings Bank Defined.

(Section 5.) The term "savings bank," when used in this act, means a bank organized for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors, and which may loan and invest the funds thereof, receive deposits of money, loan, invest, and collect the same, with interest, and repay depositors with or without interest, with power to invest said funds and moneys in such property, securities, and obligations as may be prescribed by this act; and to declare and pay dividends on its general deposits, and a stipulated rate of interest on deposits made for a stated period, or upon special terms. [Amendment approved March 6, 1915; Laws 1915, p. 119.]

The term "savings bank" cannot justly be applied to a corporation organized under sections 3923-3924 of the Revised Codes for purely commercial purposes; the designation of a bank as a "savings bank" does not require it to be classed under the

head of savings banks; the status of a banking institution is determined by the character of the business it transacts. *Williams v. Johnson*, 50 Mont. 7, 144 Pac. 768.

§ 3914. Trust Company Defined—Purposes for Which may be Formed.

(Section 6.) The term "trust company," when used in this act, means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

1. To receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon, or to allow such interest thereon as may be agreed upon.

2. To accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or by any corporations, or may be committed or transferred to them by order of any of the courts of record of this state, or any other state, or of the United States.

3. To take and accept by grant, assignment, transfer, devise or bequest, and hold any real or personal estate or trust created in accordance with the laws of this state, or any other state, or of the United States, and execute such legal trusts in regard to the same on such terms as may be declared, established, or agreed upon in regard thereto.

4. To act as agent for the investment of money for other persons or corporations, and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon.

5. To accept from and execute trusts for married women in respect to their separate property, whether real or personal, and act as agents for them in the management of such property, and generally to have and exercise such powers as are usually had and exercised by trust companies.

6. To act as trustee, assignee, or receiver in all cases where it shall be lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver, and to be appointed a trustee, assignee, or receiver, and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors, or of the estate of any lunatic, imbecile, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates.

7. To loan money upon unencumbered real estate, collateral, or personal security, and execute and issue its notes, debentures, payable at a future date, and to pledge its mortgages upon real estate and other securities as security therefor.

8. To buy and sell government, state, county, municipal, and other bonds, and all kinds of negotiable, non-negotiable, and commercial paper, stocks and other investment securities.

9. To accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors and to take and receive from any individual or corporation on deposit for safekeeping and storage, gold and silver plate, jewelry, stocks and securities, and other valuable and personal property, and to collect coupons, interest, and dividends on said above-described securities, and to rent out the use of safes and other receptacles on their premises upon such terms and for such compensation as may be agreed upon.

(Section 7.) The term "investment company," when used in this act, means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

1. To receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon, or to allow such interest as may be agreed upon, and to issue and sell its contracts or certificates of

indebtedness, bearing fixed rates of interest, in whole or in part, with participation or nonparticipation in the profits of the corporation, and maturing at fixed periods of time, or otherwise, as may be fully set forth in said contracts or certificates.

2. To buy and sell government, state, county, municipal, and other bonds, and all kinds of negotiable and non-negotiable and commercial paper, stocks and other investment securities.

3. To accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with depositors, and to collect coupons, interest, and dividends on said above-described securities. [Amendment approved March 6, 1915; Laws 1915, p. 119.]

§ 3915. Articles of Agreement.

(Section 8.) Any three or more persons desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in section 2 of this act, shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement, which shall set forth:

1. The corporate name of the proposed corporation, which shall not be the name of any other corporation theretofore created in this state for similar purposes, or any imitation of such name.

2. The name of the city or town and county in which the principal office of the corporation is to be located.

3. The amount of the capital stock of the corporation; the number of shares into which it is to be divided, and the par value of such shares; the amount of capital stock actually subscribed in good faith at the time of the signing of such articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States and in the custody of some banking institution designated as the depository thereof until the proposed corporation is fully organized and authorized to engage in business.

4. The names and places of residence of the several shareholders, and the number of shares subscribed by each.

5. The number of the board of directors, and the names of those agreed upon for the first year.

6. The number of years the corporation is to continue, which in no case shall exceed fifty years.

7. The purposes for which the association or company is formed, which may be set forth by the use of the general terms herein defined, with reference to each line of business in which the proposed corporation desires to engage.

Thereupon the articles of agreement shall be presented to the superintendent of banks, together with an application in writing in the form prescribed by the superintendent of banks for a certificate authorizing the proposed corporation to transact within this state the business specified therein. Upon the presentation of the articles of agreement, together with such application, the superintendent of banks shall examine or cause an examination to be made in order to ascertain whether the requisite capital of such bank has been subscribed and been paid up in cash. It shall also determine whether the corporation is being formed for any other than the

legitimate business contemplated by this act, or whether the public convenience and advantage will be promoted by the opening of such bank, and whether the corporate name assumed by such bank, by reason of the use by it of any one or more of the words "commercial," "trust," "savings," or "investment," in conjunction with any other word or words, resembles so closely as to be likely to cause confusion, the name of any other bank previously formed under this act. He shall also ascertain from the best sources of information at his command whether the character and general fitness of the persons named as stockholders are such as to command the confidence of the community in which such bank is proposed to be located. The expenses of the superintendent of banks in making the examinations required by this act shall be paid by the proposed bank, and payment shall be made in advance if required by the superintendent of banks.

If the superintendent of banks shall not be satisfied with the result of his investigation, he shall refuse the application within sixty days after the articles of agreement and the application have been presented to him and so notify the incorporators named therein. If the superintendent of banks shall be satisfied with the result of his investigation he shall within sixty days after such application has been made to him, issue under his hand and official seal the certificate of authorization, required by this act, in duplicate. The articles of agreement together with one of such certificates of authorization, so issued, by the superintendent of banks, shall be filed in the office of the clerk and recorder of the county in which is located the principal place of business of the proposed bank, and a certified copy of the articles of agreement, together with the other certificate of authorization issued by the superintendent of banks, shall be filed with the Secretary of State. Upon filing with the Secretary of State the articles of agreement and the certificate of authorization, and paying the fee required for the filing of articles of incorporation the Secretary of State shall issue a certificate setting forth that such corporation has been duly organized, the amount of its authorized and subscribed capital, and the business in which it is to engage; and such certificate shall be taken by all courts of this state as evidence of the corporate existence of such bank. The persons so signing and acknowledging the articles of agreement and their associates and successors, shall, for a period not exceeding fifty years next succeeding the issuance of such certificate by the Secretary of State, be a body corporate, and by such name they and their successors shall be entitled to have, possess and enjoy all the rights and privileges conferred by this act. [Amendment approved March 6, 1915; Laws 1915, p. 121.]

§ 3916. Rejection of Certificate by Superintendent of Banks—Appeal to Board of Review.

(Section 9.) In the event the application for a certificate of authorization shall have been rejected by the superintendent of banks, and the applicants feel aggrieved at such decision, they may appeal to the board of review, which shall consist of the Governor, the Secretary of State, and the Attorney General. The Governor shall be chairman of the board. Such appeal must be made within thirty days after service of notice or rejection of application for certificate of authorization. Applicants so appealing shall file a notice with the superintendent of banks that they appeal from his decision made on such application, to the board of review hereinabove

constituted. Upon the filing of such notice the superintendent of banks shall certify such application, together with his decision thereon, and the notice of appeal, to the Governor, the said board of review shall fix a time and place for hearing such appeal, and shall notify the applicants and the superintendent of banks thereof. The proceedings shall be reviewed by said board of review, which board of review may also hear other or additional evidence, and the board of review shall make an order, either affirming or reversing the order of the superintendent of banks. Within three days after such determination by the board of review all records and proceedings pertaining to such application shall be remitted to the superintendent of banks, and the decision and determination of the said board of reviews shall be final and conclusive, and shall govern the future action of the superintendent of banks. [Amendment approved March 6, 1915; Laws 1915, p. 123.]

§ 3917. Amount of Capital.

(Section 10.) The amount of the capital stock of a commercial bank shall be not less than twenty thousand dollars, which shall be paid up in cash and deposited with some bank or banks in this state at the time the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned.

The amount of the capital stock of a savings bank, trust company or investment company shall be fixed and limited by the articles of agreement, and shall be not less than one hundred thousand dollars nor more than ten million dollars, of which amount at least one hundred thousand dollars must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the capital stock of all banks shall have a par value of one hundred dollars. No bank shall have preferred stock. [Amendment approved March 6, 1915; Laws 1915, p. 124.]

§ 3918. Calling of First Corporate Meeting.

(Section 11.) When the formation of the corporation is completed under the provisions of this act by the issuance of the certificate of incorporation by the Secretary of State, any three of those signing the articles of agreement may call the first meeting of the corporation at such time and place as they may appoint, by giving notice thereof by publication in some newspaper of general circulation in the county in which the principal office for the transaction of business is to be located at least five days before the time appointed for such meeting. If all the subscribers to the capital stock unite in a call for such meeting, in writing, no notice is necessary. If the first meeting be not called within thirty days from the date of the certificate of incorporation, the superintendent of banks is authorized to cancel his certificate of authorization. [Amendment approved March 6, 1915; Laws 1915, p. 124.]

It is not required of a state bank, in proceeding to increase its capital stock, that it shall give a six weeks' notice of a meeting of its stockholders to consider the question, as required by section 3827

of the Revised Codes; that section has reference to other than state banks. *State v. Yoder*, 39 Mont. 202, 207, 103 Pac. 499.

§ 3919. Board of Directors—Qualifications, Tenure and Vacancies.

(Section 12.) The affairs of the bank shall be managed by a board of directors, not less than three nor more than twenty-five in number, all of whom shall be stockholders of such bank and citizens of the United States, and of whom at least three-fourths must be residents of the state of Montana. No person who shall have been convicted of a crime against the banking laws of the United States or of any state of the Union shall be elected a director. The directors shall be elected for the term of one year at the annual meeting of the stockholders, which shall be held on the second Tuesday in January of each year. In case the election shall not be made on the day fixed for the annual meeting, the corporation shall not thereby be dissolved, but an election may be had at any other time agreeable to the by-laws of the corporation, and the persons so elected shall hold their office until the second Tuesday in January following, or until others are elected and qualified. In case of death or resignation of one or more of said directors the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election, at which time a director shall be elected to fill out the unexpired term. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in such office and will not knowingly violate or permit a violation of any of the provisions of this act; that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. Such oaths shall be made in duplicate, one copy of which shall be transmitted to the superintendent of banks and filed in his office, and one copy shall be kept on file in the office of the bank. [Amendment approved March 6, 1915; Laws 1915, p. 124.]

§ 3920. Change in Number of Directors.

(Section 13.) The number of directors may be increased or decreased at any annual meeting of the stockholders or any special meeting thereof called for such purpose, by a resolution passed by a majority vote of the stock represented at such meeting, but such resolution shall not become effective until authenticated copies thereof are filed with the superintendent of banks, the Secretary of State and the county clerk and recorder of the county in which is located the bank. [Amendment approved March 6, 1915; Laws 1915, p. 125.]

§ 3921. Director must Own not Less than One Thousand Dollars in Stock.

(Section 14.) No person shall be eligible for election as director of a bank unless he is a stockholder of the bank, owning in his own right shares thereof of the par value of at least one thousand dollars and every person elected to be a director who, after such election, shall cease to be the owner in his own right of the amount of such stock aforesaid, or shall hypothecate or in any way pledge such stock as security for any loan or debt, shall immediately notify the superintendent of banks of such sale or hypothecation, and such director may be removed from the office of director by the superintendent of banks, unless such disability be removed by the acquisition of other shares of stock or release of such pledge within the time prescribed by the superintendent of banks. [Amendment approved March 6, 1915; Laws 1915, p. 125.]

§ 3922. Selection of Officers and Employees—Meetings and Minutes Thereof.

(Section 15.) The board of directors shall have power to elect a president, one or more vice-presidents, cashier, or one or more assistant cashiers, and such other officers and employees as they may from time to time deem to be to the best interest of the bank, and fix their compensation. The president and vice-president shall be chosen from the board of directors. The board of directors shall also elect a secretary, who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the date of the meeting and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. Such minutes shall be read and approved at the next succeeding meeting of the board of directors, and the minutes of such next succeeding meeting shall show such fact. Such minute-books shall be kept in the office of the bank at all times, and shall be presented to the examiner at the time of his examination of the bank, and it shall be the duty of such examiner to include in his report of examination of such bank a statement of the dates on which such meetings were held since the last examination of such bank by the examiner, and the names of the directors in attendance at each of said meetings. The board of directors of a bank must hold a meeting at least once a month. Any person who shall make a false entry in the said book, or who shall change or alter any entry made therein shall be deemed guilty of a misdemeanor. [Amendment approved March 6, 1915; Laws 1915, p. 126.]

§ 3923. By-laws.

(Section 16.) The persons signing the articles of agreement shall, at their first meeting, adopt by-laws for the government of the corporation, which by-laws may provide for:

1. The time, place and manner of calling and conducting the meetings of the corporation.
2. The number of stockholders constituting a quorum.
3. The mode of voting by proxy.
4. The time of the annual election of directors, and the mode and manner of giving notice thereof.
5. The duties of officers.
6. The manner of election and the tenure of office of all officers other than the directors.
7. Suitable penalties for violations of by-laws, not exceeding in any case one hundred dollars for any one offense.

The by-laws adopted must be certified to by a majority of the directors and the secretary of the corporation, and recorded in the book of by-laws, which said book shall be open to the inspection of the public during the office hours of each day, except holidays. A copy of the by-laws shall also be transmitted to the superintendent of banks. The by-laws may be repealed or amended, or new by-laws be adopted, at the annual meeting, or at any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or the power to repeal and amend the by-laws, and adopt new by-laws may, by a similar vote at the first meeting or any annual meeting, be delegated to the board of directors. [Amendment approved March 6, 1915; Laws 1915, p. 126.]

§ 3924. Liability of Stockholders.

(Section 17.) The stockholders of every bank shall be severally and individually liable, equally and ratably, and not one for the other, for all contracts, debts, and engagements of such corporation, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No person holding stock as executor, administrator, guardian, or trustee, and no person holding such stock as a pledge or collateral security, shall be personally subject to any liability as stockholder in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in like manner and to the same extent as the testator, intestate, ward or the person interested in such trust fund would have been liable if he had been living or competent to act and held the stock in his own name. [Amendment approved March 6, 1915; Laws 1915, p. 127.]

§ 3925. Transfer of Shares of Stock.

(Section 18.) The delivery of a certificate of stock to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate issued to the person to whom it has been transferred. [Amendment approved March 6, 1915; Laws 1915, p. 127.]

§ 3926. Elections—How Conducted.

(Section 19.) All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The board of directors may prescribe the form and manner of executing proxies. The shares of stock of an estate of a minor, or of a person of unsound mind may be represented and voted by his guardian, and of a deceased person by his executor or administrator, and every person who shall pledge his stock may nevertheless represent and vote the same at all meetings, unless the pledgor appoints the pledgee as a proxy in accordance with the by-laws of the company. The board of directors may provide for the closing of the stock books of the company for such length of time prior to the annual election as may be by it deemed convenient for the making up of the lists of the stockholders. Any regular or called meeting of the stockholders may adjourn from day to day or from time to time if, for any reason, there is not present a quorum or no election is had, such adjournment and the reasons therefor being recorded in the minutes of said meeting. All elections and other actions at meetings of stockholders or directors shall be conducted in accordance with the laws of the state of Montana governing corporations in general, except as herein

otherwise specially provided. [Amendment approved March 6, 1915; Laws 1915, p. 127.]

§ 3927. Investment of Capital of Savings Bank.

(Section 20.) At least one-half of the paid-in capital of a savings bank, and one-half of the whole amount deposited therein, must be invested in bonds, or other securities of the United States or any of the states of the United States, or any county, city, town, or school district of this state, on which interest is regularly payable, or loaned on unencumbered real estate worth at least double the amount to be secured. The remainder may be invested in the aforesaid character of securities, or in approved personal security but no loan must be made on personal security of less than two responsible persons, or collateral security to be approved by the directors, and no loan upon personal security shall be made to any one person or co-partnership to an amount exceeding ten thousand dollars. No president, vice-president, director, or other officer or servant of a savings bank shall directly or indirectly borrow any of the funds of such bank or of its deposits, or in any manner use the same in his private affairs or business, nor shall any director receive any pay, salary, or emolument until such interest as the directors shall have determined to allow depositors shall have been provided for in accordance with the regulations of the corporation.

The real estate which such corporation may lawfully purchase, hold, and convey is:

1. Such as may be necessary for the proper transaction of its business, not exceeding in value fifty thousand dollars.
2. Such as is mortgaged to it in good faith for moneys loaned in pursuance of the provisions of this act, or given as security for money loaned or advanced.
3. Such as is purchased at the sale on judgment or decree obtained or rendered for money so loaned or advanced.

Savings banks organized under the provisions of this act must not purchase, hold, or convey real estate in any other case, or for any other purpose than herein specified, and shall not buy or sell any personal property except such as may be necessary for the proper transaction of its business, or such as may have been pledged, mortgaged, or assigned to it to secure moneys loaned or advanced. Provided, the term "savings bank" as used in this section shall mean any bank organized to do the business specified in section 5 of this act, only. [Amendment approved March 6, 1915; Laws 1915, p. 128.]

§ 3928. Real Estate Which Banks may Purchase, Hold or Convey.

(Section 21.) Banks organized under the provisions of this act may purchase, hold or convey real estate as follows:

1. Such as is necessary for the proper transaction of its business, but it shall not invest an amount exceeding fifty per cent of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business.
2. Such as is mortgaged to it in good faith by way of security for loans previously made by or moneys due to the corporation.

3. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its business.

4. Such as it purchases at sales under judgments, decrees, or mortgages held by the company.

Real estate acquired in the manner set forth in subdivisions 3 and 4 hereof shall not be held longer than a period of five years from the date of acquisition unless special written permission to do so be granted by the superintendent of banks. [Amendment approved March 6, 1915; Laws 1915, p. 129.]

§ 3929. Trust Companies—Dealing in Property and Investment of Capital.

(Section 22.) Trust and investment companies may lease, purchase, hold, and convey all such real or personal property as may be necessary to carry on their authorized business, as well as such real or personal property as the board of directors may deem necessary to acquire in the enforcement or settlement of any claims or demands arising out of business transactions, and may execute and issue in the transaction of their business, all necessary receipts, certificates, and contracts. The board of directors of any such corporation are authorized to invest the capital and assets of said corporation, and keep the same invested, in securities to be approved by the said board, and it shall be lawful for the board to make such investments of its capital and assets, and of the funds accumulated by its business, including money, deposits, or any part thereof, in negotiable or non-negotiable notes, or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town, or school district of this state, or any other state of the United States, legally authorized to issue the same, or bonds or obligations of the United States. [Amendment approved March 6, 1915; Laws 1915, p. 129.]

§ 3930. Banks Empowered to Join National Reserve.

(Section 23.) Any bank is hereby authorized and empowered to join or associate itself with the National Reserve Association of the United States, or any branch thereof, and nothing herein contained shall prevent or prohibit any bank from joining or associating itself with any such association or branch thereof or from investing any part of its capital or surplus in the stock of such association or any branch thereof, in accordance with the terms and provisions of the act of Congress creating such association. Any bank joining or associating itself with such association or branch shall be permitted to conform to and transact its business in accordance with the terms and provisions of the act of Congress creating the same, and the rules and regulations of such association or branch thereof. [Amendment approved March 6, 1915; Laws 1915, p. 130.]

§ 3931. Business Prohibited Unless Under Superintendent of Banks.

(Section 24.) No person, firm, company, copartnership, or corporation, either domestic or foreign, not subject to the supervision of the superintendent of banks, and not required by the provisions of this act, to report to him, and which has not received a certificate to do a banking business from the superintendent of banks, shall advertise that he or it is receiving or accepting money or savings for deposit, investment or otherwise, and issuing notes or certificates of deposit therefor, or shall make use of any office sign, at the place where such business is transacted, having thereon

any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company, or that deposits are received there or payments made on check, or any other form of banking business transacted, nor shall any such person or persons, firm, company, copartnership, or corporation, domestic or foreign, make use of or circulate any letter-heads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed, or partly written and partly printed paper, whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank, savings bank or trust or investment company; nor shall any such person, firm, company, copartnership, or corporation, or any agent of a foreign corporation not having an established place of business in the state solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust or investment company, or in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank, trust or investment company. Nor shall any person, firm, company, copartnership, or corporation, domestic or foreign, not subject to the supervision of the superintendent of banks, and not required by the provisions of this act to report to him, and which has not received from the superintendent of banks a certificate to do a banking business, hereafter transact business under any name or title which contains the word, "bank," "banker," "banking," "savings bank," "savings," "trust," "trustee," "trust company" or "investment company." Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars a day for every day or part thereof during which such violation continues. Upon action brought by the superintendent of banks the court may issue an injunction restraining any such person, firm, company, copartnership, or corporation from further using such words in violation of the provisions of this section, or from further transacting business in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank, trust or investment company, during the pendency of such action, and for all time, and may make such other order or decree as equity and justice may require. [Amendment approved March 6, 1915; Laws 1915, p. 130.]

§ 3932. Capital Stock to be Paid Up—Superintendent of Banks.

(Section 25.) Every person, firm, company, copartnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings, and issuing notes or certificates of deposit therefor, or advertising that he or it is transacting the business of a bank, savings bank, or trust company, or making use of any office sign at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank, savings bank, or trust company, or that deposits are received there or payments made on check, or that interest is paid on deposits, or that certificates of deposit either with or without interest, are being issued, or that any other form of banking business is transacted, and every person, firm, company, copartnership, or corporation, domestic or foreign, making use of or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed, or partly written and partly printed paper whatever, having thereon any artificial or corporate name, or advertising that such business is the business of a bank, savings

bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting such business, and must have received from the superintendent of banks, as provided for in this act, a certificate to do a banking business. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars a day for every day or part thereof during which such violation continues. Upon action brought by the superintendent of banks the court may issue an injunction restraining any such person, firm, company, copartnership, or corporation from further violating any provision of this section, and may make such further order or decree as equity and justice may require. Every person, firm, company, copartnership, or corporation doing any of the things or transacting any of the business defined in this section, must transact such business according to the provisions of the bank act, and the superintendent of banks, or his deputy or examiners, shall have authority to examine the accounts, books, papers, cash and credits of every such person, firm, company, copartnership, or corporation, domestic or foreign, in order to ascertain whether such person, firm, company, copartnership, or corporation has violated or is violating any provisions of this section. [Amendment approved March 6, 1915; Laws 1915, p. 131.]

§ 3933. Foreign Corporations.

(Section 26.) Any corporation organized under the laws of any country or state other than this state, which has complied with all the laws of the state pertaining to foreign corporations, and is not engaged in the business of banking or receiving money on deposit in this state, may lend money in this state and, for that purpose, may maintain offices in this state, and sue and be sued in this state under its proper corporate name, notwithstanding any prohibitions contained in this act as to the use of any words in the name, signs, or advertising matter of corporations not under the supervision of the superintendent of banks. [Amendment approved March 6, 1915; Laws 1915, p. 132.]

§ 3934. Advertisement of Capital must State Amount Paid in.

(Section 27.) No bank, or officer thereof, shall advertise in any manner, or publish any statement of the capital authorized or subscribed, unless it or he advertise and publish in connection therewith, the amount of capital actually paid up. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately. [Amendment approved March 6, 1915; Laws 1915, p. 132.]

§ 3935. Keeping of Book With List of Stockholders.

(Section 28.) Every bank shall keep in its offices, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book containing a list of stockholders in such corporation, and the number of shares of stock held by each. [Amendment approved March 6, 1915; Laws 1915, p. 133.]

§ 3936. Dividends, Surplus and Losses.

(Section 29.) The directors of any bank may, at certain times, and in such manner as its by-laws prescribe, declare and pay dividends to stock-

holders of so much of the profits of the bank, and of the interest arising from the capital, surplus, and deposits, as may be appropriated for that purpose, but every bank shall, before the declaration of any dividend, carry at least one-fifth part of its net profits for the preceding half year, or for such period as is covered by the dividend, to its surplus, until such surplus shall amount to twenty-five per centum of its paid-up capital stock. The whole or any part of such surplus may at any time be converted into paid-in capital, in which event such surplus shall be restored in the manner above provided until it amounts to twenty-five per centum of the aggregate paid-up capital stock. Any losses sustained by any bank in excess of its undivided profits may be charged to and paid from its surplus, in which event such surplus shall be restored in the manner above provided, to the amount required by law. A larger surplus may be created, and nothing herein contained shall be construed as prohibitory thereof. [Amendment approved March 6, 1915; Laws 1915, p. 133.]

See § 4015c.

§ 3937. Safe Deposit Department.

(Section 30.) Any bank may conduct a safe deposit department, but shall not invest more than one-tenth of its capital and surplus in such safe deposit department. [Amendment approved March 6, 1915; Laws 1915, p. 133.]

§ 3938. Purchase or Loan of Own Capital Stock Prohibited.

(Section 31.) No bank shall purchase or invest its capital or surplus, or money of its depositors, or any part of either, in shares of its own capital stock; nor loan its capital or surplus, or the money of its depositors, or any part of either, on shares of its own capital stock, unless such purchase or loan shall be necessary to prevent loss to such bank on debts previously contracted in good faith. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock. [Amendment approved March 6, 1915; Laws 1915, p. 133.]

§ 3939. Sale of Securities by Officer to Bank.

(Section 32.) No director, officer, employee, or controlling stockholder of any bank shall directly or indirectly, for his own account, for himself, or as the partner or agent of others, sell or transfer or cause to be sold or transferred to the bank of which he is a director, officer, employee, or controlling stockholder, any note or bond secured by any mortgage or trust deed on real estate, or any contract arising from the sale of real estate, in which such director, officer, employee, or controlling stockholder is personally or financially interested without a vote of the majority of the board of such bank, duly noted upon the minutes of the meeting at which such transaction is decided upon, which minutes shall be signed by a majority of the board. Any director, officer, employee or controlling stockholder of any bank who knowingly violates or consents to the violation of this provision shall be guilty of a felony. [Amendment approved March 6, 1915; Laws 1915, p. 133.]

§ 3940. Limit on Amount of Bond Issue.

(Section 33.) No commercial bank shall purchase, agree to purchase, or underwrite any bond issue in excess of ten per centum of its assets, except bonds of the United States, of the state of Montana, of the cities,

towns, counties, or school districts of this state. [Amendment approved March 6, 1915; Laws 1915, p. 134.]

§ 3941. Disposition of Acquired Stock.

(Section 34.) No commercial or savings bank shall purchase or invest its capital or surplus, or money of its depositors, or any part of either, in the capital stock of any corporation, unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within six months thereafter, if it can be sold for the amount of the claim of such bank against it; and all capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within one year after such purchase or acquisition. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock. [Amendment approved March 6, 1915; Laws 1915, p. 134.]

§ 3942. Obtaining Property by Fraud—False Report—Refusal to Permit Inspection of Books.

(Section 35.) A director, officer, agent, or employee of any bank who,

1. Knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

2. Concurs in omitting to make any material entry thereof; or,

3. Knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false; or,

4. Having the custody or control of its books, willfully refuses or neglects to make any proper entry in the books of such corporation as required by law, or to exhibit, or allow the same to be inspected and extracts to be taken therefrom by the superintendent of banks, his chief deputy, or any of his examiners, shall be guilty of a felony. [Amendment approved March 6, 1915; Laws 1915, p. 134. Prior amendment of section 3942a: Laws 1911, p. 119.]

§ 3943. Overdraft by Officer or Employee.

(Section 36.) Any officer, director, agent, teller, clerk or employee of any bank who either,

1. Knowingly overdraws his account with such bank, and thereby obtains the money, notes, or funds of any such bank; or,

§ 3944. Receiving Personal Profit from Loan.

2. Asks or receives or consents or agrees to receive any commission, emolument, gratuity, or reward, or any money, property, or thing of value for his own personal benefit, or of personal advantage, for procuring or endeavoring to procure for any person, firm, or corporation any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange, by such bank, or for permitting any person, firm or corporation to overdraw any account with such bank, is guilty of a misdemeanor. [Amendment approved March 6, 1915; Laws 1915, p. 135.]

§ 3945. Waiver of Stockholders' Liability.

(Section 37.) No bank shall make any contract with any of its depositors whereby the stockholders' liability provided for by this act is in

any manner waived, and if any such contract shall be so made, such contract shall be void. [Amendment approved March 6, 1915; Laws 1915, p. 135.]

§ 3946. Purchase of Obligations of Bank by Officer.

(Section 38.) No director, officer, agent, or other employee of any bank shall directly or indirectly, for his own personal benefit, purchase, or be interested in the purchase of any obligation of said bank for a less sum than shall appear upon the face of such obligation to be the value thereof. Every person violating the provisions of this section shall, for each offense, forfeit to the state three times the face value of any such obligation so purchased. [Amendment approved March 6, 1915, Laws 1915, p. 135.]

§ 3947. Purchase of Assets of Bank by Officer.

(Section 39.) No officer, director, agent, or other employees of any bank shall directly or indirectly, for his own personal benefit, purchase, or be interested in the purchase of any of the assets of said bank for a less sum than the face value thereof. Every person violating any provision of this section shall, for each offense, forfeit to the state twice the nominal amount of any such asset so purchased. [Amendment approved March 6, 1915; Laws 1915, p. 135.]

§ 3948. Limitation on Loans.

(Section 40.) The total liabilities of any person, copartnership, or corporation to any bank for money borrowed, including in the liabilities of a copartnership the liabilities of the several members thereof, shall at no time exceed twenty per centum of the amount of the capital and surplus of such bank; but the discounting of commercial paper actually owned by the person negotiating the same, and loans made on warehouse receipts and bills of lading representing actual value, shall not be considered as the borrowing of money. [Amendment approved March 6, 1915; Laws 1915, p. 135.]

§ 3949. Loans to Managing Officer.

(Section 41.) No bank shall make a loan to any managing officer of such bank, without taking good collateral or other ample and specific security therefor, and when such loan, or a loan made to a director of such bank, banking institution or trust company, exceeds in amount ten per cent of its capital stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution or trust company, which said approval shall be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached thereto, and be and remain a permanent record of such bank. [Amendment approved March 6, 1915; Laws 1915, p. 136.]

§ 3950. Calculation of Profits.

(Section 42.) Interest or commissions unpaid, although due or accrued, on debts owing to any bank, shall not be included in calculation of its profits. [Amendment approved March 6, 1915; Laws 1915, p. 136.]

§ 3951. Limitation on Loan on Real Estate.

(Section 43.) No commercial bank shall, except for the purpose of facilitating the sale of property owned by the bank, make any loan on the se-

curity of real estate, unless it is a first lien and does not exceed fifty per centum of the market value of the real estate taken as security.

No commercial bank shall loan in the aggregate more than thirty-five per centum of its assets on real estate loans of the character specified in this section.

These provisions, however, shall not prevent any bank from taking another and immediately subsequent mortgage or deed of trust thereon when it already holds a first mortgage or deed of trust on such real estate, nor from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when, in the judgment of the directors of such bank, such subsequent liens are necessary further to secure the payment of any debts and save such bank from loss. Provided, the term "commercial bank" as used in this section shall mean a bank organized to do the business specified in section 4 of this act, only. [Amendment approved March 6, 1915; Laws 1915, p. 136.]

§ 3952. Certified Checks.

(Section 44.) Whenever a check drawn on any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm or corporation drawing the same. It shall be unlawful for any officer or employee of any bank to certify any check drawn upon such bank unless the person, firm or corporation drawing the check has on deposit with the bank at the time such check is certified, an amount of money subject to the payment of such check, equal to the amount specified in such check. Any officer or employee of any bank who shall willfully violate the provisions of this section, or shall resort to any device, or receive any fictitious obligations, directly or indirectly, in order to evade the provisions hereof, or who shall certify checks before the amount thereof shall have been regularly entered to the credit of the drawer, shall be guilty of a felony. [Amendment approved March 6, 1915; Laws 1915, p. 136.]

Editorial Notes.

Law of certified checks. 128 Am. St. Rep. 691.

Effect of certified checks. 69 Am. Dec. 691; 89 Am. Dec. 442.

Certified checks raised before certification. 26 Am. Rep. 96.

Liability upon raised certified checks. 14 Am. Rep. 237.

§ 3953. Interest not to Exceed Lawful Rate.

(Section 45.) No bank shall demand or receive for loans or discounts a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions. [Amendment approved March 6, 1915; Laws 1915, p. 137.]

§ 3954. Joint Deposits—Survivorship.

(Section 46.) When a deposit has been made, or shall hereafter be made, in any bank, in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release or discharge to the bank for any

payment so made. [Amendment approved March 6, 1915; Laws 1915, p. 137. Prior act: See Laws 1909, p. 159.]

§ 3955. Trust Deposits—Payment.

(Section 47.) Whenever any deposit shall be made in any bank by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said deposit was made. [Amendment approved March 6, 1915; Laws 1915, p. 137. Prior act: See Laws, 1909, p. 41.]

Editorial Notes.

Deposits made by a fiduciary. 42
Am. Rep. 168.

Deposits in name of "trustee." 82
Am. St. Rep. 520.

§ 3956. Deposit by Minor.

(Section 48.) Whenever any deposit shall be made in any bank and by and in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the deposit shall have been made, and the receipt of such minor shall be a sufficient release or discharge for such deposit to the bank. [Amendment approved March 6, 1915; Laws 1915, p. 137.]

§ 3957. Demand or Time Deposits.

(Section 49.) Demand deposits, within the meaning of this act, shall comprise all deposits payable within thirty days, and time deposits shall comprise all deposits payable after thirty days, and all savings accounts and certificates of deposit which are subject to not less than thirty days' notice before payment. [Amendment approved March 6, 1915; Laws 1915, p. 137.]

§ 3958. Reserve Requirements.

(Section 50.) Every bank, except a reserve bank, shall maintain at all times a reserve of at least fifteen per centum of its deposit liabilities, of which reserve such portion as the board of directors may determine may be on deposit in banks approved by the superintendent of banks as reserve banks. A bank approved by the superintendent of banks as a reserve bank must at all times maintain a reserve of at least twenty-five per centum of its deposit liabilities, of which such portion as the board of directors may determine, may be on deposit in banks approved by the superintendent of banks as reserve banks. Any state or national bank in a city of the United States designated as a reserve or central reserve city by the Comptroller of the Currency or the federal reserve board, or in a city of the first or second class in the state of Montana, shall be eligible to designation as a reserve bank by the superintendent of banks. Such approval or designation may be withdrawn or withheld at any time for cause.

Whenever the reserve of any bank shall fall below the amount required herein to be kept, such bank shall not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the superintendent of banks shall notify any bank whose reserve may be below the amount herein required, to make good such re-

serve, and in case the bank fails, for thirty days thereafter, to make good such reserve, the superintendent of banks may notify the Attorney General, and he shall institute proceedings for the appointment of a receiver and to wind up the business of the bank.

Any bank which shall become a member of the Federal Reserve Bank Association, and shall in all respects comply with the rules and regulations of that association, shall be deemed to have complied with the provisions of this act. In estimating the reserve required by this act the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposits against which reserves shall be determined. No bank shall at any time become indebted, either directly or indirectly, for borrowed money or rediscounts in an amount in excess of its paid up capital and surplus without first obtaining written authority from the superintendent of banks.

Provided, that debentures or certificates of indebtedness issued by any investment company to run for a period of three years or more shall not be included in the "Deposit Liabilities" of said investment company, as affected by the provisions of this section. [Amendment approved March 6, 1915; Laws 1915, p. 138.]

§ 3959. State Banking Department.

(Section 51.) There is hereby created a State Banking Department. The state examiner shall be ex-officio superintendent of the department and in the discharge of all the duties imposed by this act he shall be known and designated as the superintendent of banks. He shall, if required by the Governor, file an additional bond as superintendent of banks in a penal sum not to exceed twenty-five thousand (\$25,000) dollars, with a surety, or sureties, to be approved by the Governor, conditioned upon the faithful discharge of the duties of his office as superintendent of banks. He shall designate one of the deputies of his office as deputy superintendent of banks, who shall, in the absence or inability to act of the superintendent of banks, have all the powers and duties of the superintendent of banks. He shall also appoint such additional number of deputies, not exceeding four, as he may need, to discharge in a proper manner the duties imposed upon him by law, none of which appointees shall be interested, either directly or indirectly, in any bank. Each deputy shall receive an annual salary of eighteen hundred dollars and traveling expenses. He shall also furnish such bond as the Governor may direct when called upon to perform permanently the duties of the superintendent of banks. [Amendment approved March 6, 1915; Laws 1915, p. 139.]

§ 3960. Report to Superintendent of Bank.

(Section 52.) Every bank shall make to the superintendent of banks not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president, vice-president or cashier of such bank, and attested by the signatures of at least two of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the bank at the close of business on any past day by him specified; and shall be transmitted to the superintendent of banks within five days after the receipt of a request or requisition therefor from him, and in such form as may be required by the superintendent of banks it shall be published as soon as possible in a newspaper published in the place where such bank is estab-

lished, or if there be no newspaper in the place, then in one published nearest thereto in the same county, at the expense of the bank; and such proof of the publication shall be furnished at such times and in such manner as may be required by the superintendent of banks. [Amendment approved March 6, 1915; Laws 1915, p. 139.]

§ 3961. Report of Declaration of Dividend.

(Section 53.) In addition to the statement required by the preceding section, every such bank shall report to the superintendent of banks within ten days after declaring any dividend, showing the amount of such dividend and the amount of net earnings in excess of the dividend. Such statement shall be attested as provided for in the attestation of statement by the preceding section. [Amendment approved March 6, 1915; Laws 1915, p. 139.]

§ 3962. Special Reports to Superintendent of Banks.

(Section 54.) In addition to the information obtained from the report required by the provisions of section 52 of this act, the superintendent of banks shall also have the power to require any bank to furnish a special report in writing, verified as required by section 52 of this act, whenever in his judgment such special report is necessary to inform him fully of the actual financial condition and affairs of such bank. Any willful false statement in the premises shall be perjury and shall be punished as such. [Amendment approved March 6, 1915; Laws 1915, p. 140.]

§ 3963. Superintendent to Call for Reports.

(Section 55.) The superintendent of banks shall call for the reports specified by section 52 of this act at least five times each year. The "past day specified" by the superintendent of banks under the provisions of section 52 of this act shall be on the day designated by the Comptroller of Currency of the United States for reports of national banking associations. [Amendment approved March 6, 1915; Laws 1915, p. 140.]

§ 3964. Reports Confidential.

(Section 56.) The information contained in the reports and statements hereinabove provided for, other than such reports as are required to be published, shall be deemed to be for the confidential information of the superintendent of banks only, and such information shall not be imparted to any persons who are not officially associated in and with the office of the superintendent of banks, and the information therein contained shall be used by the superintendent of banks only in the furtherance of his official duties. [Amendment approved March 6, 1915; Laws 1915, p. 140.]

§ 3965. Penalty for Failure to Make Report Within Five Days.

(Section 57.) If any bank neglects to make out or transmit the statements required by this act, within five days after call, it shall be subject to a penalty of twenty dollars for each day in default after the periods respectively required by this act that it may delay to make and transmit any such statements. Should any bank delay for a period of one month to make out and transmit the statements and proofs of publication required by this act beyond the period when the same is required to be made, or willfully violate any of the provisions of this act with reference to said statements and reports, the directors shall be personally responsible for all the debts

of such corporation contracted previous to and during the period of such neglect. [Amendment approved March 6, 1915; Laws 1915, p. 140.]

§ 3966. False Statements and Entries Deemed Felony.

(Section 58.) Every officer or other person authorized by this act who willfully and knowingly makes any false statement of facts, statement of account, or report, and every officer, agent, or clerk of any bank who willfully and knowingly makes any false entries in the books of such bank, or knowingly subscribes or exhibits false papers with the intent to deceive any person authorized to examine such bank, and every person authorized by the provisions of this act to make statements or reports who willfully and knowingly subscribes or makes any false statement or report shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned at hard labor in the state prison for a term of not less than one nor more than ten years. [Amendment approved March 6, 1915; Laws 1915, p. 140.]

§ 3967. Insolvency or Impairment of Bank.

(Section 59.) Whenever the superintendent of banks, after a full and careful examination of the affairs of any bank organized under the provisions of this act, or any foreign corporation or branch thereof doing a banking business in Montana, shall find evidence of impairment or insolvency, he shall immediately prepare and submit a statement of its conditions to the Governor and Attorney General, and if the Governor and Attorney General are satisfied from such statement that such impairment or insolvency exists, they shall order the superintendent of banks either (1) to notify the bank's stockholders to make good such impairment or insolvency in a specified time, or (2) to immediately take charge of such bank and to furnish an official bond for such sum as they may designate.

If ordered to take charge of the bank the superintendent of banks shall forthwith take possession of its books, records, and assets, and shall be authorized and empowered, and is directed to take such action as, in his judgment, is best for the protection of the depositors and stockholders of such bank.

While in charge of the superintendent of banks, the books, records, and assets shall not be subject to any levies or attachments.

If the stockholders do not make good the impairment or insolvency within the time required after notification, the superintendent of banks is authorized to take charge of such bank, its property and assets, upon direction of the Governor and Attorney General.

That whenever, in the judgment of the superintendent of banks, or upon application of any bank, the interests of the depositors of any bank can be best subserved by placing a deputy superintendent temporarily in charge of such bank, he shall have authority and discretion to do so, and that the actual expenses of the department in connection therewith shall be paid by such bank. [Amendment approved March 6, 1915; Laws 1915, p. 141.]

§ 3968. Appointment of Receiver.

(Section 60.) It appearing necessary to have a receiver appointed for any such bank or banks, the superintendent of banks shall make a full and complete statement of account and report to the Governor with respect to the condition of its business and affairs; and thereafter, should it appear to the Governor that application should be made for the appointment of a

receiver he shall thereupon direct the Attorney General to file a petition in the district court of the county in which the bank is situated asking for the appointment of a receiver, in the name of the state of Montana, and such petition shall be controlling and by the court so considered and acted upon, even though stockholders, creditors, or others may have theretofore filed applications for the appointment of a receiver. When any such petition is filed by the state, no suggestion shall be contained therein as to any particular person to be appointed in such capacity. But the court shall appoint some suitable person for receiver, who shall first be nominated by the superintendent of banks, and whose compensation shall in no case exceed five hundred dollars per month. Receivers of all insolvent banks shall make reports to the superintendent of banks in the same manner as is required of other banks, at least five times each year when called upon to do so, or at any time when requested by the superintendent of banks. Any receiver who refuses to submit the affairs of such bank to an examination by the superintendent of banks, or his assistants, or fails to make a report when called for by said officers, or who violates any of the provisions of law relating to examination of banks, shall be subject to removal. [Amendment approved March 6, 1915; Laws 1915, p. 141.]

§ 3969. Payment of Expenses of Superintendent.

(Section 61.) The expense of traveling, hotel bills, and time actually spent by the office of the superintendent of banks in performance of the duties imposed by section 60, shall be paid in full by the bank to the state treasurer, and by him credited to the state banking fund. [Amendment approved March 6, 1915; Laws 1915, p. 142.]

§ 3970. Deposits in Insolvent or Impaired Bank.

(Section 62.) Whenever any bank shall be insolvent or in an impaired condition in the manner described and set forth in section 59 of this act, such bank shall not accept or receive on deposit any money, bank bills, or notes, United States Treasury notes or currency, or other notes, bills, or drafts circulating as money or currency, or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency, separate and apart from the general assets of the bank, from and after the date of such notice is given to its officers and stockholders, as set forth in section 59 of this act, and which trust deposits shall be kept separate and apart from the general assets of the bank until such impairment or insolvency has been made good, when such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the superintendent of banks; provided, that in the event such impairment or insolvency be not made good or removed within the period stated in the notice required in section 59 of this act, then any and all such trust deposits shall be returned to the depositors making them; provided, further, that any officer, director, cashier, manager, member, partner, or managing partner thereof, who shall knowingly accept or receive, be accessory to, or permit, or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony, and upon conviction thereof shall be punished

by a fine not exceeding ten thousand dollars, or imprisonment in the state prison not exceeding five years, or by both fine and imprisonment as aforesaid. [Amendment approved March 6, 1915; Laws 1915, p. 142.]

§ 3971. Penalty for Receiving Deposits When Insolvent or Making False Statements.

(Section 63.) Any officer, agent, or clerk of any bank, knowing such bank to be insolvent, who receives money, bank bills, notes of the United States, or currency, or other bills or drafts circulating as money or currency, except in the manner set forth in section 62 of this act, or who subscribes or makes any false statements or entries in the books of such bank, or knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such bank, or willfully subscribes or makes false reports, shall be subject to imprisonment at hard labor in the state prison for a term not exceeding five years. [Amendment approved March 6, 1915; Laws 1915, p. 143.]

Editorial Notes.

Criminal liability of officer of insolvent bank for receiving deposit

therein as defendant on his actually receiving deposit in person. Ann. Cas. 1912B, 316.

§ 3972. Duties of Auditor Transferred to Superintendent of Banks—Examination and Supervision.

(Section 64.) All duties now required to be performed by and all responsibilities now imposed upon, the state auditor under the laws regulating the business of banking, shall hereafter be performed by the superintendent of banks, and all papers and reports now on file in the office of the state auditor pertaining to banks are hereby transferred to the custody of the superintendent of banks. The superintendent of banks shall exercise a constant supervision, either personal or through the examiners herein provided for, over the books and affairs of all banks doing business within the state of Montana; and shall, through the examiners, visit, at least twice a year, each of said banks and verify the assets and liabilities of each, and so far investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books. He shall further investigate the methods of operation and conduct of business of said banks and their systems of accounting, to ascertain whether such methods and systems are in accordance with law and sound banking principles. He may examine, or cause to be examined by the examiners, on oath, any of the officers, directors, agents, clerks, customers, or depositors of any bank touching the affairs and business thereof, and may, in the performance of his official duties, issue, or cause to be issued by himself or the examiners, subpoenas, and administer or cause to be administered by the examiners, oaths; provided, that in case of any refusal to obey any subpoena issued by him or under his direction, such refusal may at once be reported to the district court of the district in which the bank is located, and such court shall enforce obedience to such subpoena in the manner provided by law for enforcing obedience to the process of said court. In all matters relating to his official duties the superintendent of banks shall have the same power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, agents and employees of banks doing business under the provisions of this act, and all persons having dealings with or knowledge of the affairs or methods of any such institution, shall at all times afford reasonable facilities for such

examinations, make such returns and reports to the superintendent of banks as he may require; attend and answer under oath his lawful inquiries, produce and exhibit such books, accounts, documents and property as he may desire to inspect, and in all things aid him in the performance of his duty. [Amendment approved March 6, 1915; Laws 1915, p. 143.]

§ 3973. Report and Records of Superintendent.

(Section 65.) The superintendent of banks shall keep all proper records and files pertaining to the duties and work of his office, and shall report to the Governor annually touching all of his official acts, giving abstracts of statistics and the condition of the affairs of all banks to which his duties relate, and make such recommendations and suggestions as he may deem proper, which report shall be printed and bound in a satisfactory and substantial manner and distributed among the banks doing business under the provisions of this act. [Amendment approved March 6, 1915; Laws 1915, p. 144.]

§ 3974. Fees to be Credited to State Banking Fund.

(Section 66.) The fees required to be paid by banks under the provisions of section 215 of the Revised Codes of Montana, 1907, and Chapter 111, Laws of 1911, to the state treasurer for the credit of the state examiner's fund shall hereafter be credited by the state treasurer to the state banking fund, and shall be paid out by the state treasurer upon warrants drawn against the state banking fund for the support and maintenance of the State Banking Department. [Amendment approved March 6, 1915; Laws 1915, p. 144.]

§ 3975. Repeal of Former Sections 3909 to 4015.

(Section 67.) Title II of Part IV of Division I of the Civil Code of Montana, entitled "Banks and Banking Corporations," being the provisions embraced within sections 3909 to 4015, both numbers inclusive, of the Revised Codes of Montana, 1907, and the acts amendatory thereof, and all laws in conflict therewith, are hereby repealed. Provided, however, that all corporations heretofore organized under the laws of the state of Montana, and engaged in the business of banking as herein defined at the time this act goes into effect, shall be continued in existence and effect under the provisions of this act until the full term for such corporation was originally created has expired, upon such corporation complying with the provisions of this act, which compliance shall be authenticated by a certificate of the superintendent of banks issued upon his first inspection of each bank applying therefor. When no other punishment is provided herein, any person willfully or knowingly, violating any provisions of this act, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. The Attorney General upon information furnished by the superintendent of banks, shall bring any actions necessary to enforce the provisions of this act, and any fine or penalties collected under the provisions of this act shall be paid to the state treasurer, and be credited by him to the state banking fund. [Amendment approved March 6, 1915; Laws 1915, p. 144. Prior amendment of § 4004: Laws 1909, p. 218.]

§§ 3976-4015. [Repealed.]

By act approved March 6, 1915; Laws 1915, c. 89, p. 118.

§ 4015a. Liability of Bank Paying Forged Check.

No bank shall be liable to a depositor for the payment by it of a forged or raised check unless within one year after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid is forged or raised. [Approved March 4, 1909; Laws 1909, c. 78, p. 107.]

Editorial Notes.

Forged check, payment of, effect of on rights of party defrauded. 39 Am. Dec. 519.

Liability upon raised certified checks. 14 Am. Rep. 237.

Rights and liabilities of the several parties after payment of forged checks. 17 Am. St. Rep. 889; 10 L. R. A. 49; 25 L. R. A. (N. S.) 1308; 29 L. R. A. (N. S.) 100.

§ 4015b. Liability of Bank Paying Check Through Mistake.

No bank shall be liable to a depositor because of the nonpayment, through mistake or error and without malice, of a check which should have been paid, unless the depositor shall allege and prove actual damage by reason of such nonpayment, and in such event the liability shall not exceed the amount of damage so proved. [Approved March 6, 1915; Laws 1915, c. 90, p. 145.]

Editorial Notes.

Right of bank to recover money paid by mistake. Ann. Cas. 1912D, 494.

§ 4015c. Dividends by Banking or Trust Companies.

The directors of any banking corporation, trust deposit and security company or savings bank, organized under the laws of Montana, or any foreign corporation or branch thereof doing a banking business in Montana, may declare a dividend from the net earnings after deducting all losses, provided that before any such dividend shall be declared, ten per cent of the amount available for such a dividend shall be set aside into a surplus fund, until said surplus fund shall amount to twenty per cent of the capital stock of such corporation. [Approved March 8, 1909; Laws 1909, c. 112, p. 159.]

See § 3936.

§ 4015d. Change from State to National Bank.

(Section 1.) Any bank may become a corporation for the purpose of carrying on the business of banking within this state pursuant to the provisions of the act of Congress, "to provide a national currency secured by a pledge of United States stock, and to provide for the circulation and redemption thereof," approved June 3, 1864, and of Title LII of the Revised Statutes of the United States, whenever stockholders owning two-thirds of the stock of such bank shall have voted to become such corporation, or have executed a written consent authorizing its directors to make the certificate required therefor by the laws of the United States, or whenever a majority of the directors of such bank having been authorized in their discretion to make the change, shall, by a vote of such majority decide to become such corporation; and the cashier of such bank shall publish notice thereof for thirty days in such newspaper as the directors may select, and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders, and notify the state bank examiner of this state that such bank has decided to become a corporation under the laws of the United States. [Approved March 1, 1909; Laws 1909, c. 41, p. 48.]

§ 4015e. Surrender of Charter by State Bank.

(Section 2.) Any such bank which will become a corporation for carrying on the business of banking under the laws of the United States shall cease to be a corporation under the laws of this state, except that for the term of three years thereafter, its corporate existence shall be deemed to continue for the purpose of prosecuting and defending suits by and against it, and of enabling it to close its concerns, and to dispose of and convey its property. The members of the board of directors last in office, when such corporation shall have become a corporation under the laws of the United States, shall continue to be the board of directors of the new corporation, with power to take all necessary measures to carry out and perfect such organization by signing the articles of association and the organization certificate, and adopting such regulations as may be just and proper and not inconsistent with the acts of Congress in relation thereto. Such change from a state to a national bank corporation shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national bank corporation, or any tax imposed by the laws of this state up to the date of its becoming such national bank corporation, in proportion to the time which has elapsed since the next preceding payment thereof. [Approved March 1, 1909; Laws 1909, c. 41, p. 49.]

§ 4015f. Reduction of Capital Stock.

(Section 3.) The director of such new corporation may reduce the capital stock of the bank to its par value by dividing the surplus among its stockholders, or may retain such portion of such surplus as they may deem necessary; and in case of an increase of the capital stock under the provisions of the acts of Congress, may charge the shares of such increased capital stock with a like amount, to place the whole of such capital stock on an equality; and may award such new stock, or such proportion or fractional parts thereof, to such persons as they shall determine are entitled thereto, and as are provided in their articles of association and in the acts of Congress; but new directors may be chosen at such time and in the manner provided in the articles of association and the acts of Congress. [Approved March 1, 1909; Laws 1909, c. 41, p. 50.]

§ 4015g. Certificate of Change to National Bank.

(Section 4.) When any such bank has decided to become a corporation under the laws of the United States, the directors shall immediately thereafter execute and transmit to the comptroller of the currency the proper certificate and other instruments for its conversion into a national bank corporation under the laws of the United States. When any such bank shall have become authorized to commence the business of banking under the laws of the United States, all of the property of such bank shall immediately, by act of law, and without any conveyance or transfer, be vested in and become the property of the national bank corporation, into which such bank, shall have been converted. [Approved March 1, 1909; Laws 1909, c. 41, p. 50.]

§ 4015h. Reorganization of National Bank as State Bank.

(Section 5.) Any national bank authorized to dissolve, and which shall have taken the necessary steps to effect dissolution, may reorganize

as a state bank upon the consent in writing of the owners of two-thirds of the capital stock of such bank, and with the approval of the state bank examiner. The stockholders shall make, execute and acknowledge articles of incorporation as required by the laws of the state of Montana and shall set forth therein the said written consent of such stockholders. Upon the filing of said articles as provided by law, and upon the approval of the state bank examiner, such bank shall be deemed to be reorganized under this act, and thereupon all assets, real and personal, of such dissolved national bank shall be vested in and become the property of such reorganized state bank, subject to all liabilities of such national bank not liquidated, before such reorganization. [Approved March 1, 1909; Laws 1909, c. 41, p. 50.]

§ 4015i. Unincorporated Banks—Designation of Name.

(Section 1.) It shall be unlawful hereafter for any person or persons, in any wise to conduct a commercial banking business, or a banking business of discount and deposit, within the state of Montana in the capacity of an individual or of a copartnership or of an unincorporated association unless the name under which such bank is known and conducted shall contain the name of such individual, or the name of at least one actual and responsible member of such copartnership or association, in addition to which name there shall be no other designation than the words "bank of," "banking-house of," "banker," of "bankers." [Approved March 6, 1911; Laws 1911, c. 111, p. 200.]

§ 4015j. Financial Condition Required of Unincorporated Bank.

(Section 2.) Every such individual, copartnership, or association intending to conduct such a bank or banking business within the state of Montana shall, before the receipt of any money whatsoever on deposit, actually own and possess, within the state of Montana, approved property or asset not exempt from execution of the minimum value of not less than twenty thousand (\$20,000) dollars in cities and towns having a population of two thousand or less; in cities having a population of over two thousand and less than five thousand the sum of thirty thousand (\$30,000) dollars; in cities having a population of five thousand and less than ten thousand, the sum of fifty thousand (\$50,000) dollars; in cities having ten thousand population and less than twenty-five thousand the sum of seventy-five thousand (\$75,000) dollars; in all cities having a population of twenty-five thousand or over, the sum of one hundred thousand (\$100,000) dollars which financial condition must appear and be carried on the books of any such bank or banks. Such requirement shall extend and be applicable separately to each and every private bank conducted by any person, copartnership or association, and no asset or assets shall appear on the books of more than one bank. [Approved March 6, 1911; Laws 1911, c. 111, p. 200.]

§ 4015k. Private Banks Subject to Inspection by State Examiner.

(Section 3.) Every private bank, corporation or association, conducting a banking business within the state of Montana, operating under the foregoing provisions shall be subject to examination and visitations of the state examiner once each year, and oftener when deemed necessary by said examiner, who shall have full power and authority to investigate and examine all books, papers and effects of any such bank or banking-house

for the purpose of ascertaining the financial condition of any such bank or banks, and shall have the power in aid thereof to administer oaths to any person or persons, or the agent or employees of any person or persons conducting such bank or banking business. [Approved March 6, 1911; Laws 1911, c. 111, p. 201.]

§ 4015l. Information Obtained by State Examiner.

(Section 4.) Any knowledge or information gained or discovered by the state examiner in pursuance of his powers or duties as herein prescribed, shall be deemed confidential information of the state examiner's office only, and such information shall not, except as hereinafter provided, be imparted to any person or persons who are not officially associated in and with the office of the state examiner, and such information shall be used by the state examiner only in the furtherance of his official duties. [Approved March 6, 1911; Laws 1911, c. 111, p. 201.]

§ 4015m. Reports of Private Bank.

(Section 5.) The cashier of any bank doing business under the provisions of this act when so directed by the state examiner shall make a report to the said state examiner at his call; which report shall not be made less than four times during each year, and which said report shall not be made less than two calendar months apart, which said reports shall be made in a form prescribed by the state examiner, verified by the oath or affirmation of said cashier, which said statements or reports must contain a full abstract of the general accounts of the bank, and exhibit under appropriate head the resources and liabilities thereof, so as to plainly show all of the resources and liabilities of said bank and the amount at any time thereof, which said statements shall be transmitted to the state examiner within five days after the receipt of the request or requisition therefor. Said report in such condensed form as may be required by said state examiner must be published once in a newspaper of general circulation in the place where said bank is located, or if there be no newspaper of general circulation published in said place, then in the nearest newspaper available, which publication must be at the expense of the bank making said report, and such proof of publication of the said report shall be furnished as may be required by the said state examiner. The state examiner shall also have power to call for special reports from any particular bank whenever in his judgment the same are necessary under the provisions of this act. [Approved March 6, 1911; Laws 1911, c. 111, p. 201.]

§ 4015n. Report by Examiner of Impairment of Assets of Bank.

(Section 6.) Whenever the state examiner after a full and careful examination of the affairs of any such bank as provided for herein shall find evidence of any impairment of the property or assets herein above provided for, or evidence of the insolvency of any such person, copartnership or association, he shall immediately prepare and submit his statement of its condition to the Governor and the Attorney General, and if the Governor and Attorney General are satisfied from such statement that such impairment or insolvency exists, they shall order the state examiner to notify the person or persons, copartnership or association conducting such bank to make good such impairment or insolvency within a specified time, or the said Governor and Attorney General may order the said state examiner to immediately take charge of such bank and to furnish an official

bond for such sum as the Governor and Attorney General shall designate. [Approved March 6, 1911; Laws 1911, c. 111, p. 202.]

§ 4015o. Duty of State Examiner in Case of Insolvency of Bank.

(Section 7.) If so ordered by the Governor and the Attorney General, the state examiner shall forthwith take possession of all the books, records and assets of any such person, copartnership or association conducting such bank and shall be authorized and empowered and is hereby directed to take such action as in his judgment is best for the protection of the depositors and creditors, and the person or persons conducting such bank, and may proceed as hereinafter provided. While in charge of the state examiner, all books, records and assets of any such bank, shall not be subject to execution or attachment. [Approved March 6, 1911; Laws 1911, c. 111, p. 202.]

§ 4015p. Examiner to Take Charge of Bank When Impairment not Remedied.

(Section 8.) If the person or persons, conducting such bank do not make good the said impairment or insolvency within the time prescribed in section 6 hereof after notification, the state examiner is authorized to take charge of said bank and all its property and assets upon the direction of the Governor and the Attorney General. [Approved March 6, 1911; Laws 1911, c. 111, p. 203.]

§ 4015q. Receiver for Bank.

(Section 9.) If it appears necessary to have a receiver appointed for such bank or banking business, the state examiner shall make full and complete report of the condition of the assets and liabilities of such bank to the Governor and thereafter if it shall appear to the Governor that a receiver is necessary, he shall thereupon direct the Attorney General to file his petition in the district court of the county in which such bank is located asking for the appointment of a receiver in the name of the state of Montana, and such petition shall be controlling, and shall be by the court so considered and acted upon even though the depositors or creditors or other persons may have theretofore filed application for the appointment of a receiver. When any such petition is filed as herein provided no suggestion shall be contained therein as to the person to be appointed by said court to act in such capacity. Receivers of all such insolvent banks appointed under the provisions of this act shall conduct said bank so taken charge of under the supervision of the state examiner and the state examiner shall take such steps with reference to said bank as he shall think advisable, either to close up the affairs of said bank in accordance with law, or to place said bank in a solvent condition. The receiver herein provided for is subject to the same restrictions and liable to removal for a dereliction of duty wherever the court may deem it advisable so to do. [Approved March 6, 1911; Laws 1911, c. 111, p. 203.]

§ 4015r. Compensation and Expenses of Receiver.

(Section 10.) The receiver provided for in this act shall receive such reasonable compensation as shall be ordered by the court and in no event shall such compensation exceed the fees allowed executors and administrators in the administration of estates of deceased persons under the laws of this state. [Approved March 6, 1911; Laws 1911, c. 111, p. 203.]

§ 4015s. Compensation and Expenses of State Examiner.

(Section 11.) The actual and necessary expenses and the sum of ten (\$10) dollars per day shall be allowed the state examiner for the performance of the duties imposed by this act, which shall be paid in full by such bank under investigation for the time actually spent in making such investigation and in going to and returning therefrom. [Approved March 6, 1911; Laws 1911, c. 111, p. 204.]

§ 4015t. Failure of State Examiner to Perform Duty—Penalty.

(Section 12.) If the state examiner, or his deputy, shall fail to perform any duty imposed upon him under the provisions of this act, or if any person or the members of any copartnership or association, shall violate any of the provisions of this act, they shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term of not more than five years. [Approved March 6, 1911; Laws 1911, c. 111, p. 204.]

§ 4015u. Receiving Deposits by Insolvent Bank—Making False Entries.

(Section 13.) Any person, or the members of any copartnership or banking association, willfully or knowingly receiving deposits, money or commercial papers, circulating as money, when such person or copartnership or banking association is insolvent, or who subscribes or makes any false statement, or entries in the books of any such bank or who knowingly subscribes or exhibits any false papers with the intention of deceiving any person authorized to examine the condition of any bank provided for in this act, or who willfully subscribes or makes false reports, to the state examiner shall be guilty of a felony and shall be punishable by imprisonment in the state prison for a term not exceeding five years. [Approved March 6, 1911; Laws 1911, c. 111, p. 204.]

INSURANCE.**§ 4017. License Fee.**

All insurance corporations, associations and societies, as hereinbefore specified in the preceding section, before commencing to do business in the state of Montana, shall be required to secure a license, authorizing them to transact business of insurance corporations, associations or societies, and shall pay to the state auditor, for such license, the following fees:

For a license to collect in any one year premiums amounting to five thousand dollars or less, one hundred and twenty-five dollars.

For a license to collect in any one year premiums over the sum of five thousand dollars, the sum of twenty dollars for each and every one thousand dollars to be so collected; provided that, where any insurance corporation, association or society has fifty per cent of its capital stock invested in Montana securities, such insurance corporation, association or society shall be allowed to deduct whatever tax it may have already paid, from the amount due for such license fee or tax, as herein provided. [Amendment approved March 4, 1915; Laws 1915, p. 91.]

§ 4018. Duplicate License.

The state auditor, upon the payment of the fees enumerated in the preceding section, or, after the deductions have been made, as above provided for, shall issue, in duplicate, a license, as therein provided, a copy of which shall be forthwith filed in the office of the state officer having jurisdiction over and charge of the enforcement of the laws of the state

of Montana pertaining to insurance corporations. [Amendment approved March 4, 1915; Laws 1915, p. 91.]

§ 4019. Licenses of Insurance Companies—When Expire.

All licenses issued under this act [§§ 4019, 4023] shall expire on the 31st day of March of each year. [Amendment approved February 13, 1909; Laws 1909, p. 16.]

§ 4023. Obtaining of Licenses to Transact Insurance Business.

Before transacting any fire, life or other indemnity or insurance business, each and every agent, firm or corporation acting as agent, solicitor or representative of such corporations or associations, shall procure annually from the state auditor a certificate of authority or license as an agent, solicitor or representative of each corporation or association represented by him or them, and which certificate shall terminate or expire on the 31st (thirty-first) day of March of each year unless sooner revoked or terminated as otherwise provided, for which a fee of five dollars for each certificate shall be paid to the state auditor, provided, that the state auditor is hereby prohibited from issuing a certificate of authority to write policies of insurance or to solicit and obtain and transact insurance business, as defined in this act, to any person, agent, firm or corporation, unless such person, agent, firm or corporation is a legal resident of the state of Montana at the time such certificate of authority is issued. Any person or persons who shall in any way violate the provisions of this section shall upon conviction be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail for not less than thirty days nor more than ninety days, or both such fine and imprisonment at the discretion of the court. Certificates of authority or licenses issued under this section shall be considered the licenses of the company, corporation, association or society applying for the same, and may at all times be transferred from the agent, firm or corporation for which the license was originally issued to another agent, firm or corporation on the surrender of the said license to the state auditor, who will make the proper indorsement thereon. [Amendment approved February 13, 1909; Laws 1909, p. 16.]

§ 4048. Investment of Insurance Funds in Irrigation Bonds.

Be it enacted by the Legislative Assembly of the State of Montana:

That in all cases where any law of the state of Montana now authorizes the investment of any of the funds of any insurance company, organized and doing business under the laws of the state of Montana, in state, county, city or school district bonds or securities, such authorization is hereby extended in all such cases to the purchase of the bonds of any irrigation district heretofore or hereafter organized under the laws of the state of Montana. [Amendment approved February 14, 1913; Laws 1913, c. 24, p. 24.]

§ 4050. Powers of Fire Insurance Company.

It shall be lawful for any corporation organized under this chapter and doing business in this state: 1. To insure houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and to make all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water; to insure

against loss or damage to motor vehicles resulting from accident, collision or marine and inland navigation and transportation perils; and to insure growing crops against loss or damage resulting from hail or the elements. 2. To make insurance on the health of persons and against the personal injury, disablement, or death, resulting from traveling or general accident by land or water. 3. To insure the fidelity of persons holding places of public or private trust, and to furnish surety on official bonds, and for the performance of other obligations; and to receive on deposit and insure the safekeeping of books, papers, moneys, stocks, bonds and all kinds of personal property. 4. To insure horses, cattle, and other stock, against loss or damage by accident, theft, or any unknown or contingent event whatever, which may be the subject of legal insurance, to lend money on bottomry or respondentia, and cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property by means of any loan or loans which it may make on mortgages, bottomry or respondentia, and generally to do all things proper to promote these objects. To insure plate glass against breakage and steam boilers against explosion, and against loss or damage to life or property resulting therefrom; against loss by burglary or theft, or both; against damage by water caused by the breakage or leakage of sprinklers, pumps, water-pipes or plumbing and its fixtures, and accidental injury to such apparatus; and to permit liability insurance in all its branches. 5. To insure titles and credit. No corporation organized under this chapter, or transacting business in this state, shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent of its paid-up capital, or write on a risk within the corporate limits of any one city an amount representing more than the paid-up capital of the corporation, unless the excess shall be insured by the same in some other good and reliable company or companies. The restriction as to the amount of risk any such corporation shall assume, shall not apply to corporations organized to guarantee the fidelity of persons in places of public or private trust, or to corporations that receive on deposit and guarantee the safekeeping of books, money, papers and other property.

Nothing in the act shall be construed so as to alter, change, modify or repeal any existing statute, which provided or established the amount of the capital required of any, or all, classes of insurance corporations herein mentioned. Combinations may be permitted of the different classes herein established, under one incorporation, except that fire insurance companies may not transact any other character of business than that designated in paragraph 1 of the preceding chapter; and provided further that where such combinations may be formed the minimum capital shall be equal to the amount provided by law for each of the different classes so combined.

Nothing in this act shall be construed preventing the transaction of health and accident insurance in combination with life insurance; provided, however, that the minimum capital of such corporation shall equal the amount required of both classifications. [Amendment approved March 6, 1911; Laws 1911, p. 246.]

This section was also amended February 25, 1911. See Laws 1911, p. 84.

§ 4062. Foreign Insurance Companies.

It shall not be lawful for any insurance company, association or partnership, organized or associated for any of the purposes specified in this chapter, incorporated by, or organized under the laws of any other state,

or the United States, or any foreign government, directly or indirectly, to take risks or transact any business of insurance in this state, unless possessed of two hundred thousand dollars of actual paid-up capital, exclusive of any assets of any such company as shall be deposited in any other states or territories, or foreign countries, for the special benefit or security of the insured therein; any such company desiring to transact any such business as aforesaid, by any agent or agents in this state, shall appoint one attorney in fact in each county in which agencies are established, resident of such county, and shall file with the state auditor a written instrument, duly signed and sealed authorizing such attorney in fact of such company to acknowledge service of process, for and in behalf of such company in the state consenting that such service of process, mesne, or final, upon such attorney shall be taken and held as valid as if served upon the company to the laws of this state, or any other territory or state, and waiving all claim of right or error by reason of such acknowledgment or service, and also that in case of death, absence, or if for any other cause, service of process cannot be made upon the attorney so appointed, service of process may be made on the state auditor and insurance commissioner ex officio of this state, or his successors in office, with the same power and effect as that served upon such agent; and such power of attorney cannot be revoked or modified (except that a new one may be submitted) so long as any policy or liability remains outstanding against said company in this state. Whenever such lawful process against any insurance company shall be served upon the commissioner he shall forthwith forward a copy of the process served on him by mail, postpaid, and directed to the secretary of the company, or in case of companies of foreign countries, to the resident manager in this country; and shall also forward a copy thereof to the general agent of said company in this state. Said company shall also file a certified copy of their charter or deed of settlement, together with a statement under the oath of the president or vice-president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place, where located, the amount of its capital with a detailed statement of the facts and items, as required from companies organized under the laws of this state as per section 3920 (583) hereof; such statement shall also show to the full satisfaction of the state auditor and insurance commissioner ex officio that said company, if organized without the United States of America, has deposited in some one of the United States or territories, a sum not less than one hundred thousand dollars for the special benefit or security of the assured therein, and shall file also a copy of the last annual report made under any law of the state, territory or foreign country by which said company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by the liabilities, as stated in section 3920 (583) of this chapter, to the extent of twenty per cent thereof while such deficiency shall continue; provided, that any company formed for the purpose of carrying on the business of plate glass, health, accident, livestock, steam boiler, hail and cyclone, credit or other liability insurance, both foreign and domestic, shall have not less than one hundred thousand (\$100,000) dollars of capital stock subscribed, fifty per cent of which shall be paid up in cash, and invested as provided by the laws governing the investment of capital stock of fire insurance companies. [Amendment approved February 28, 1913; Laws 1913, p. 54.]

§ 4065. Examination by Commissioner of Insurance and Surety Companies.

(Section 1.) The commissioner of insurance shall examine and inquire into violations of insurance laws of this state, and for this purpose, or to see if the laws are obeyed, or to examine the financial condition, affairs and management of any insurance company, including surety companies, organized under the laws of this state, or any other state, or territory, or foreign country, he may visit, or cause to be visited by any competent person or persons he may appoint, the head office in this state, or in the United States of any domestic or foreign insurance company applying for admission to, or already admitted to do business in this state, and may for these purposes examine or investigate any company organized under the laws of Montana, and any agency of any company doing business in this state. The cost of such examinations shall be paid by the company examined, and shall include the reasonable expenses of the commissioner, his deputies and assistants employed therein, whose services are paid for by the insurance department, and the compensation and reasonable expenses of his assistants employed therein whose services are not paid for by the department. Duplicate receipts showing the entire cost of the examination authorized by the commissioner of insurance shall be taken and certified to by the company examined, and shall be filed in and become a part of the public records of the insurance department. When insurance companies not admitted to do business in this state, or companies adjudged insolvent, or companies for any cause withdrawing from the state, neglect, fail or refuse to pay the charges for examination as approved by the commissioner of insurance, such charges shall be paid out of the expense account of the commissioner of insurance in the same manner as other expenses of said office, or from any other such fund created to cover the expenses of the insurance department upon such approval and the amount so paid shall be a first lien upon all the assets and property of such company, and may be recovered by suit by the Attorney General on behalf of the state of Montana, and restored to the said expense account, or other proper fund. The commissioner may also examine companies on the request of five or more of the policy-holders, representing at least one hundred thousand dollars insurance in force, who shall make affidavit of their belief, with specifications of their reasons therefor in writing, that such company is in an unsound or insolvent condition; provided, that only the United States branches of companies incorporated in foreign countries shall be examined by said commissioner. For the purposes of the examinations, inquiries or investigations as aforesaid, the commissioner of insurance or his deputy, or the person authorized to make them, shall have free access to all books and papers of an insurance company that relate to its business, and the books and papers kept by any officer, agent or employee relating to, or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations, in the examination of the directors, trustees, officers, agents or employees of any such company, and any other person in relation to its affairs, transactions, and conditions. He may require and compel the production of records, books, papers, contracts or other documents by attachment, if necessary. Any person knowingly or willfully testifying falsely in reference to any matter material to said investigation, examination or inquiry, shall be deemed guilty of perjury, and punished accordingly, and any person who shall willfully refuse or fail

to attend, answer or produce books or papers, or who shall refuse to give said commissioner of insurance, or the person authorized by him, full and truthful information and answer in writing to any inquiry or question made in writing by said commissioner, or the person authorized by him, in regard to the business of insurance, or suretyship, carried on by such person, or other matters under investigation, or refuse or willfully fail to appear and testify under oath before the commissioner of insurance or the person authorized by him, shall be deemed guilty of a misdemeanor. Any director, trustee, officer, agent or employee of an insurance company, or any other person, who shall knowingly or willfully make any false certificate, entry or memorandum upon any of the books or papers of any insurance company, or upon any statement filed or offered to be filed in the insurance department of this state, or used in the course of any examination, inquiry or investigation with the intent to deceive the commissioner of insurance or any person employed or appointed by him to make such examination, inquiry or investigation, shall be deemed guilty of a misdemeanor. [Amendment approved February 13, 1909; Laws 1909, p. 12.]

§ 4065a. Publication of Examination—Revocation of License.

(Section 2.) When the commissioner of insurance deems it to the interest of the public, he may publish the result of any examination or investigation in a newspaper of general circulation published at the state capital. If the commissioner finds upon examination, hearing or other evidence, that any insurance company, including surety companies, organized in this state or in any other state, territory or foreign country, is in an unsound condition, or has failed to comply with the law or with the provisions of its charter, or that its condition is, or its methods are, such as to render its operations hazardous to the public or to its policy-holders, or that its actual assets, exclusive of its capital, are less than its liabilities, or if its officers or agents refuse to submit to examination or to perform any legal obligation relative thereto, or refuse on behalf of the company to pay the examination charges, he shall suspend or revoke all certificates of authority granted to said insurance company, and to its officers or agents, and shall cause notice thereof to be published in one or more daily newspapers of general circulation published at the state capital, and no new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored. Before suspending or revoking the certificate of authority of any such company, the commissioner shall unless it is insolvent or its capital impaired, grant it fifteen days in which to show cause why such action should not be taken. Any insurance company, including surety companies, organized under the laws of this state or any other state, territory or foreign country, whose certificate of authority has been suspended or revoked by the commissioner, may, within fifteen days thereafter, appeal from said order to the district court, which court, upon the filing of the proper petition, shall cause the record and orders of the commissioner to be brought before it, and upon a hearing of the case by the court de novo, the court shall either confirm or revoke the order of the commissioner, as the law and the fact of the case may warrant. [Approved February 13, 1909; Laws 1909, c. 13, p. 12.]

§ 4065b. Commissioner and Deputy Commissioner—Meaning of Terms.

(Section 3.) The word "commissioner" and the words, "deputy commissioner," as used in this act, shall designate the state auditor and insur-

ance commissioner, ex officio, and the deputy commissioner of insurance, respectively, wherever in the laws of Montana which are not repealed by this act other titles are used to designate the chief officers and the second officer of the insurance department, such titles shall be understood as meaning the commissioner of insurance and the deputy commissioner of insurance, as hereinbefore specified. [Approved February 13, 1909; Laws 1909, c. 13, p. 16.]

§ 4065c. Repeal of Conflicting Statutes.

(Section 4.) All acts and parts of acts in conflict with this act, and particularly sections 4065, 4068, 4071, 4128 and 4129 of the Revised Codes of Montana of 1907, are hereby repealed. [Approved February 13, 1909; Laws 1909, c. 13, p. 16.]

§ 4068. [Repealed.]

By act approved February 13, 1909; Laws 1909, c. 13, p. 16.

§ 4071. [Repealed.]

By act approved February 13, 1909; Laws 1909, c. 13, p. 16.

§ 4073. [Repealed.]

By act approved March 2, 1911; Laws 1911, c. 67, p. 131.

Chapter 67, Laws of 1911, approved March 2d of the year, and operative by its express words immediately on approval, repealed section 4073, Revised Codes; and, inasmuch as taxes become due on the first Monday in March annually, which day fell in that year on the sixth of the month, a tax assessed under the older law was invalid. "It was within the power of the legislature to have made a reservation in the repealing act requiring the payment of the tax upon the excess of premiums collected for the year 1910, but it did not do so." *Westchester Fire Ins. Co. v. Sullivan*, 45 Mont. 19, 121 Pac. 472.

This section, providing for the taxation of insurance companies, applies only to business transacted within the state, and does not contravene the interstate commerce clause of the federal Constitution. *New York Ins. Co. v. Deer Lodge County*, 43 Mont. 243, 250, 115 Pac. 911; affirmed

in 231 U. S. 495, 58 L. Ed. 332, 34 Sup. Ct. Rep. 167.

This section was repealed, without any reservation, by the act of March 2, 1911; and, as the first Monday of March of that year, the time for assessment, fell on the 6th of that month, the assessor was without authority, at that time, to demand a statement, and had no authority, under this section, to collect the excess of premiums received by an insurance company for 1910. *Westchester Fire Ins. Co. v. Sullivan*, 45 Mont. 18, 20, 121 Pac. 472.

Life insurance business, in which there arises an excess of premiums over losses and ordinary expenses, and upon which excess an assessor levies a tax, is not interstate business, nor is it made so by the use of the mails in consummating contracts relative to the business. *New York Ins. Co. v. Deer Lodge County*, 43 Mont. 243, 115 Pac. 911; affirmed in 231 U. S. 495, 58 L. Ed. 332, 34 Sup. Ct. Rep. 167.

If a statute, providing that insurance companies shall be taxed upon the excess of premiums received over losses and ordinary expenses incurred within the state during the year previous to the year of listing, is repealed a few days before the statutory time of listing, so that, at the time the list is furnished and the assessment and levy are made, there is no provision of law requiring the payment of any tax, a levy and assessment made at such statutory time are void. *Westchester Fire Ins. Co. v. Sullivan*, 45 Mont. 18, 121 Pac. 472.

§ 4075a. Foreign Mutual Fire Insurance Companies—Permission to Transact Business.

Any corporation organized under the laws of any other state, district or territory of the United States, or of a foreign country, to transact the business of fire insurance on the mutual plan, in accordance with the law of the state, district, territory or country in which the corporation is, and shall be so organized, may be permitted to transact any business within this state which it is authorized to transact in the state where it is organized under upon complying with the law of this state applicable to it, when possessed of a surplus amounting to two hundred thousand dollars (\$200,-

000) or when such corporation has in force seven million dollars (\$7,000,000) of insurance. [Approved March 8, 1915; Laws 1915, c. 101, p. 227.]

§ 4092. Formation of Mutual Rural Insurance Company.

Any number of persons, not less than twenty-five, who collectively shall own, in any county or counties, which are adjoining and adjacent to each other in this state, property of the value of twenty-five thousand dollars, which they desire to have insured, may form a corporation, under the provisions of this act, for the purpose of insuring the property of the members, situate within the counties where the operations of the corporation are to be carried on, against loss or damage by fire, or the elements of any such agencies as may be specified in the articles of incorporation. [Amendment approved March 6, 1911; Laws 1911, p. 180.]

§ 4106. Property Which Shall not be Insured.

No company organized under the provisions of this act shall insure any property not situate within the county where its operations are to be carried on; provided that if any company organized under the provisions of this act, shall have any number of persons who are members of such company who live in and reside in adjacent and adjoining counties within such county, may insure any property situate within the adjoining and adjacent counties thereto. [Amendment approved March 6, 1911; Laws 1911, p. 180.]

§ 4114. Stock Insurance Companies.

Stock companies organized under the laws of this state shall have not less than one hundred thousand dollars of capital subscribed, fifty per cent of which shall be paid up and invested in bonds of the United States or this state, bonds issued by authority of the legislative assembly of this state secured by land grants, bonds or warrants of any school district, county or city in this state, or in bonds or mortgages upon unencumbered real estate in this state, worth, exclusive of improvements, at least double the sum loaned thereon, which security shall be deposited with the state auditor, and upon such deposit and evidence by affidavits or otherwise, satisfactory to the auditor that the capital is all subscribed in good faith, and that the company is the actual and unqualified owner of the securities representing the paid up capital, he shall issue to such company the certificate hereinafter provided for, but no part of the fifty per cent aforesaid shall be loaned to any stockholder or officer of the company. The remainder of such capital shall be paid within such time as the directors or trustees of the company may order, or as the state auditor may direct, but not later than two years from date of issuance of auditor's certificate, and until paid it shall be secured by the notes of the stockholders of the company: Provided, further, that the additional fifty per cent of the capital stock may also be deposited with the state auditor under the conditions as the original fifty per cent, or any additional amount which is necessary for the purpose of complying with the laws of any other state to enable said company to do business in such state, and the company making such deposit shall be entitled to the income thereof and may, from time to time, with the consent of the state auditor, when not forbidden by the law under which the deposit is made, change in whole or in part, the securities which compose the deposit for other competent securities of equal par value. [Amendment approved March 2, 1911; Laws 1911, p. 131.]

§ 4124.

See § 4048, ante.

§ 4128, 4129. [Repealed.]

By act approved February 13, 1909;
Laws 1909, c. 13, p. 16.

§ 4141. Rebating by Life Insurance Companies—Penalties.

(Section 1.) No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insureds (the insured) of the same class and equal expectation of life in the amount of payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes. Nor shall any such company, or agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon; nor shall any such company or any officer, agent, solicitor or representative thereof pay, allow or give or offer to pay, allow or give, directly or indirectly, as inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration of inducement whatever not specified in the policy contract of insurance; nor give, sell or purchase or offer to give, sell or purchase, as inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatever, not specified in the policy.

Every officer or agent of an insurance company doing business in this state, who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor.

It shall be the duty of the commissioner of insurance upon being satisfied that any such insurance company, or any agent thereof, has violated any of the provisions of this section, to revoke the certificate of authority of the company or agent so offending. [Amendment approved February 13, 1909; Laws 1909, p. 17.]

§ 4142. Offering of Inducements to Insure.

(Section 2.) From and after the date this act takes effect no life insurance company shall issue in this state, nor permit its agents, officers or employees to issue in this state, agency company stock or other stock or securities, or any special or advisory board or other contract of any kind promising returns and profits as an inducement to insurance; and on and after July 1, 1909, no life insurance company shall be authorized to do business in this state, which issues or permits its agents, officers or employees to issue in the state of Montana, or in other state or territory, agency company stock or other stock or securities, or any special or advisory board or other contract of any kind promising returns and profits as an inducement to insurance, and no corporation or stock company, acting as agent of a life insurance company, nor any of its agents, officers or employees, shall be permitted to agree, sell, offer to sell or give, or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds or agreement of any form or nature, promising returns and profits as an inducement to insurance, or in connection therewith; provided, that nothing herein contained shall impair or effect in any manner any such contracts issued or made as an inducement to insurance prior to

the enactment hereof, or prevent the payment of the dividends or returns therein stipulated to be paid. It shall be the duty of the commissioner upon being satisfied that any such insurance company, or any agent thereof, has violated any of the provisions of this section, to revoke the certificate of authority of the company or agent so offending.

(Section 3.) All acts and parts of acts in conflict with this act, particularly sections 4141, 4142 and 4143 of the Revised Codes of the state of Montana of 1907, are hereby repealed. [Amendment approved February 13, 1909; Laws 1909, p. 18.]

§ 4143. [Repealed.]

By act approved February 13, 1909; Laws 1909, c. 15, p. 19.

§ 4145a. Life Insurance Companies—Duration and Renewal—Number of Directors.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That corporations organized in this state for the transaction of the business of life insurance may be formed to endure fifty years; but they may be renewed from time to time for the same or shorter periods, within three months before or after the time for the termination thereof, if a majority of the votes cast at any regular election, or special election called for that purpose, be in favor of such renewal, and if those wishing such renewal shall purchase the stock of those opposed thereto at its real value.

(Section 2.) That the by-laws of corporations organized in this state for the transaction of the business of life insurance shall fix the number of the trustees or directors thereof, but the same shall not be less than three, and a majority thereof shall be residents of this state. [Approved March 3, 1909; Laws 1909, c. 51, p. 59.]

TITLE INSURANCE.

§ 4177a. Title Insurance Company—Who may Incorporate.

(Section 1.) Any number of persons, not less than three, may associate themselves together under the provisions of this act, and become incorporated as a title insurance company, who shall, with their successors, constitute a body politic and corporate, under the name adopted by them in their articles of incorporation, provided no such corporation shall adopt a name previously adopted by any other corporation in this state. [Approved March 8, 1915; Laws 1915, c. 118, p. 257.]

§ 4177b. Insurance Statutes and Rule Applicable.

(Section 2.) Every title insurance company shall be subject to and shall comply with all the requirement of the insurance laws and the rules and regulations of the insurance department of this state, and the insurance commissioner shall have the same power and authority regarding any such corporation that he may exercise in relation to other insurance corporations organized under the laws of this state, including the right to examine and inspect the financial condition and affairs of such company relating to the insurance business of such company, and to compel compliance with the provisions of law governing any such corporation. [Approved March 8, 1915; Laws 1915, c. 118, p. 257.]

§ 4177c. Capital Stock—Amount and Investment.

(Section 3.) Every corporation organized under the provisions of this act shall have not less than one hundred thousand dollars of capital

subscribed, at least fifty per cent of which shall be paid up and invested in bonds of the United States, or this state, bonds issued by the authority of the legislative assembly of this state secured by land grants, bonds or warrants of any school district, county or city in this state, or in bonds or mortgages upon unencumbered real estate in this state worth, exclusive of improvements, at least double the sum loaned thereon, which securities shall be deposited with the insurance commissioner, who shall give his receipt therefor, and the state shall be responsible for their custody and safe return. Upon such deposit and evidence by affidavit or otherwise, satisfactory to the insurance commissioner, that the capital is all subscribed in good faith, and that the company is the actual and unqualified owner of the securities representing the paid-up capital, he shall issue to such company a certificate which shall be its authority to commence business and issue policies in this state. [Approved March 8, 1915; Laws 1915, c. 118, p. 258.]

§ 4177d. Exchange and Sale of Securities—Interest and Dividends.

(Section 4.) The securities above referred to in this act and so deposited may be exchanged from time to time, with the approval of the insurance commissioner, for other securities receivable as aforesaid and so long as the company so depositing said securities shall continue solvent, said company shall have the right and shall be permitted by the insurance commissioner to receive the interest and dividends on the securities so deposited. Said securities shall be subject to sale and transfer and to the disposal of the proceeds by said insurance commissioner, only on the order of a court of competent jurisdiction, and for the benefit of the holders of guaranties and policies of insurance issued by the company depositing such securities. [Approved March 8, 1915; Laws 1915, c. 118, p. 258.]

§ 4177e. Expenditures for Commencement of Business.

(Section 5.) Any such corporation organized under the laws of this state and having a capital stock paid in, in cash, of more than one hundred thousand dollars, after depositing said guaranty fund as above provided, may invest an amount not to exceed fifty per cent of its subscribed capital stock in the preparation and purchase of materials or plant necessary to enable it to engage in such title insurance business; and such materials or plant shall be deemed an asset valued at the actual cost thereof, in all statements and proceedings required by law for the ascertainment and determination of the condition of such corporation, or at such lesser value as may be estimated by such corporation in any such statement or proceeding, or omitted entirely therefrom. [Approved March 8, 1915; Laws 1915, c. 118, p. 258.]

§ 4177f. Surplus Fund—Creation and Impairment.

(Section 6.) Every title insurance company shall annually set apart a sum equal to ten per cent of its premiums during the year, which sums shall be allowed to accumulate until a fund shall have been created equal in amount to twenty-five per cent of the subscribed capital stock of such corporation. Such fund shall be maintained as a further security to holders of the guaranties and policies of insurance issued by such corporation, and shall be known as the "Title Insurance Surplus Fund"; and if at any time such fund shall be impaired by reason of a loss, the amount by which it may be impaired shall be restored in the manner herein above provided

for its accumulation. The reporting of a loss shall be deemed an impairment of such fund for the purposes of this section. Such corporation must not make any dividends except from profits remaining on hand after retaining unimpaired:

1. The entire subscribed capital stock.

2. The amount set apart as a surplus fund under the provisions of this section.

3. A sum sufficient to pay all liabilities for expenses and taxes, and all losses reported or in course of settlement, without impairment of the title insurance surplus fund required to be set apart as hereinabove provided.

Any written contract or instrument purporting to show the title to real property, or furnish information relative thereto, which shall in express terms purport to insure or guarantee such title or the correctness of such information, shall be deemed a policy of title insurance. [Approved March 8, 1915; Laws 1915, c. 118, p. 259.]

§ 4177g. Powers of Company.

(Section 7.) Every title insurance company organized under this act shall also have power to guarantee or insure the identity, due execution, and validity of any note or bond secured by mortgage or trust deed, and the identity, due execution and validity and recording of any such mortgage or trust deed, and the identity, due execution and validity of bonds, notes or other evidence of indebtedness issued by this state, or by any county, city, school district, irrigation district or other municipality or district herein, or by any private or public corporation, and to act as registrar or transfer agent of this state, or of any municipality or district therein, or of any private or public corporation, and to transfer or countersign any such bonds, notes or other evidence of indebtedness and to transfer or countersign certificates of stock of any private or public corporation. [Approved March 8, 1915; Laws 1915, c. 118, p. 259.]

§ 4177h. Trust Company Business.

(Section 8.) Any title insurance corporation incorporated under this act authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depositary, agent or trustee, or to do a general trust business, and having a capital of not less than three hundred thousand dollars actually paid in, in cash, may also do a business as a trust company, and maintain a trust department as well as a title insurance department, on compliance with the following conditions:

1. When such title insurance company desires to do such a departmental business, it shall first obtain the consent of both the state examiner and of the insurance commissioner, and in its application for such consent, must file a statement making a segregation of its capital and surplus for each such department. At least two hundred thousand dollars of its capital must be apportioned by such statement to its trust department. The respective portion of such capital and surplus, when such apportionment has been approved by the state examiner, and by the insurance commissioner, shall be considered and treated as the separate capital and surplus of each such department respectively, as if each such department was a separate business.

2. Such company, as to its title insurance department, shall be subject to and shall comply with all the requirements of the insurance laws and the rules and regulations of the insurance department of this state, and

may invest its capital apportioned to its title insurance department, and the accumulations thereon, in the securities in which the capital and accumulations of insurance companies are allowed by the laws of this state to be invested, including the materials and plant necessary to enable it to engage in the title insurance business as provided in this chapter.

3. Such company, as to its trust department, shall be subject to and shall comply with all the requirements of the banking laws of this state and the rules and regulations of the state examiner, and may invest its capital apportioned to its trust department, and the accumulations thereon, and trust funds received by it, in accordance with the laws of this state relative to the investment of funds of trust companies. [Approved March 8, 1915; Laws 1915, c. 118, p. 260.]

§ 4177i. Certificate from Insurance Commissioner.

(Section 9.) No corporation shall make any contract or issue any policy of guaranty or insurance affecting titles to real estate, or engage in the business of a title insurance company, until it has obtained from the insurance commissioner his certificate that such company has complied with the provisions of this chapter and is duly authorized to do business as such title insurance company. [Approved March 8, 1915; Laws 1915, c. 118, p. 260.]

§ 4177j. Loans to Officers or Employees Forbidden.

(Section 10.) No loan shall be made by any title insurance company, directly or indirectly, to any of its officers, or directors or employees, or to any member of the family of any officer or director. Any officer, director, agent or employee of any such company who knowingly consents to any violation of the terms or provisions of this section shall be guilty of a misdemeanor.

(Section 11.) All acts and parts of acts in conflict with any of the provisions of this act are hereby repealed.

(Section 12.) This act shall be in full force and effect on and after the date of its passage and approval. [Approved March 8, 1915; Laws 1915, c. 118, p. 261.]

SURETY COMPANIES.

§ 4178. Foreign Surety Companies—Admission into State.*

(Section 1.) Any company with a paid-up capital of not less than two hundred and fifty thousand dollars, incorporated and organized under the laws of any state of the United States for the purpose of transacting business as surety on obligations of persons or corporations, and which has complied with all the requirements of the law regulating the admission of such companies to transact business in this state, may be accepted as surety upon the bond of any person or corporation required by the laws of this state to execute a bond; it being the intent of this chapter to enable corporations created for that purpose to become the surety on bonds required by law, subject to all the rights and liabilities of private persons. [Amendment approved March 10, 1909; Laws 1909, p. 209.]

§ 4179. Execution of Official Bonds.

(Section 2.) Whenever any bond, undertaking, recognizance or other obligation is by law, or the charter, ordinance, rules or regulations of any

*Sections 4178-4189k embrace the matter contained in chapter 139 of the Laws of 1909, which chapter seems to supplant sec-

tions 4178-4189 of the Revised Codes of 1907.

municipality, board, body, organization, or public officer, required or permitted to be made, given, tendered or filed, with surety or sureties, and whenever the performance of any act, duty, or obligation, or the refraining from any act, is required or permitted, to be guaranteed, such bond, undertaking, obligation, recognizance or guaranty may be executed by a surety company qualified to act as surety or guarantor as above provided, and such execution by such company of such bond, undertaking, obligation, recognizance or guaranty shall be in all respects a full and complete compliance with every requirement of the law, charter, ordinance, rule or regulation, that such bond, undertaking, obligation, recognizance or guaranty shall be executed by one surety or by one or more sureties, or that such surety shall be a resident, or householder, or freeholder, or either or both or possessed of any other qualifications; and all courts, judges, heads of departments, boards, bodies, municipalities and public officers of every character shall accept and treat accordingly such bond, undertaking, obligation, recognizance or guaranty when so executed by such company, as conforming to and fully and completely complying with every such requirement of every such law, charter, ordinance, rule or regulation. [Amendment approved March 10, 1909; Laws 1909, p. 210.]

§ 4180. Release of Surety Company from Liability.

(Section 3.) Such company may be released from its liability on a bond on the same terms and conditions as are by law prescribed for the release of individual sureties. [Amendment approved March 10, 1909; Laws 1909, p. 210.]

§ 4181. Statement to Commissioner of Insurance.

(Section 4.) Every surety company chartered by this state shall annually, within sixty days after December 31st of the preceding year, render to the insurance commissioner a statement, signed and sworn to by its president and secretary, stating the amount of its capital and the manner of its investment, particularizing each item of investment; the amount of bonds upon which such company is surety; and the amount of its liabilities. Such statement shall be made on a printed form furnished by the insurance commissioner and shall include such other information as the said commissioner may require. [Amendment approved March 10, 1909; Laws 1909, p. 210.]

§ 4182. When Foreign Surety Companies may Transact Business in State.

(Section 5.) Any company incorporated and organized under the laws of any state of the United States other than this state, for the purpose of transacting business as surety on obligations of persons or corporations, may transact such business in this state upon complying with the provisions of this chapter, and not otherwise. [Amendment approved March 10, 1909; Laws 1909, p. 211.]

§ 4183. Deposit of Articles and Statement With Commissioner of Insurance.

(Section 6.) Every such company before transacting any business in this state shall deposit with the insurance commissioner a copy of its charter or articles of association and a statement signed and sworn to by its president and secretary stating: The amount of its capital, which shall not be less than two hundred and fifty thousand dollars, whether such company

does surety business solely or other insurance business together with surety insurance, and the manner of its investment, designating the amount invested in mortgages, in the stock of incorporated companies, stating what companies, in public securities, and also the amount invested in other securities, particularizing each item of investment; the amount of existing bonds upon which such company is surety, stating what portion thereof is secured by the deposit with such company of collateral security, the amount of premium thereon and the amount of its liabilities, specifying therein the amount of outstanding claims, adjusted or unadjusted, due or not due, and giving such other information as the insurance commissioner shall require. The insurance commissioner may thereafter issue to such company a license authorizing it to transact business in this state. [Amendment approved March 10, 1909; Laws 1909, p. 211.]

§ 4184. Appointment of Commissioner of Insurance to Receive Service of Process.

(Section 7.) No such company shall, directly or indirectly, take risks or transact business in this state until it shall have first appointed, in writing, the insurance commissioner of this state to be the attorney of such company in this state, upon whom all process in any proceeding against such company may be served. Said power of attorney shall stipulate and agree on the part of the company, corporation, or association, that any lawful process against the same which is served on said attorney shall be of the same legal force and validity as if served on the company, corporation, or association, and that the authority shall continue in force so long as the certificate of membership, policy, or liability remains outstanding against the company, corporation, or association, in this state. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the insurance commissioner, and copies certified by him shall be sufficient evidence. Service upon such attorney shall be sufficient service upon the principal. [Amendment approved March 10, 1909; Laws 1909, p. 211.]

§ 4185. Service of Process.

(Section 8.) Whenever lawful process against an insurance company, corporation, or association shall be served upon the insurance commissioner, he shall forthwith mail a copy of such process to the secretary of the company, or, in the case of companies of foreign countries, to the resident manager, if any, in this country. For each copy of process the commissioner shall collect two dollars, which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as part of the taxable costs if he prevails in the suit. [Amendment approved March 10, 1909; Laws 1909, p. 212.]

§ 4186. Annual Statement to be Filed With Commissioner.

(Section 9.) Every such company shall deposit with the insurance commissioner, annually, within sixty days after December 31st of the preceding year, a statement similar to that required by section 5, signed and sworn to as therein directed, of the capital of such company, and its investments and risks as aforesaid, to be made up to the thirty-first day of December next preceding, together with such other information as the insurance commissioner may require. [Amendment approved March 10, 1909; Laws 1909, p. 212.]

§ 4187. License to Transact Business in State.

(Section 10.) If the insurance commissioner be satisfied with the statements required by sections 5 and 7 of this act, and if such company shall have complied with all other provisions of law, he shall issue his license to it to transact business in this state, said license to continue in force for one year unless sooner revoked, but no such license shall be issued unless such statements are furnished, provided, that the first license may issue upon the filing of the statement required by section 5 of this act provided that all licenses shall expire March 31st of each year. [Amendment approved March 10, 1909; Laws 1909, p. 242.]

§ 4188. When Persons Shall not Act as Agents of Company.

(Section 11.) No person shall act within this state as agent for such company, unless it is possessed of two hundred and fifty thousand dollars capital, and such capital to the extent of one hundred thousand dollars is invested in obligations of the United States or obligations created by or under the laws of the state in which such company is located, or in other safe stocks or securities, the value of which at the time of such deposit shall be at or above par, and such investments are deposited with the insurance commissioner, auditor, comptroller, or chief financial officer of the state under whose laws such company is incorporated; nor unless the insurance commissioner of this state is furnished with the certificate of such insurance commissioner, auditor, comptroller, or chief financial officer aforesaid, under his hand and official seal, that he, as such insurance commissioner, auditor, comptroller, or chief financial officer of such state, holds in trust and on deposit for the benefit of all obligees of such company the securities before mentioned, which certificate shall describe the items of security so held, and shall state that he is satisfied that such securities are worth one hundred thousand dollars. [Amendment approved March 10, 1909; Laws 1909, p. 213.]

§ 4189. Who Deemed Agent of Surety Company.

(Section 12.) Every person who shall receive or transmit applications for suretyship or receive for delivery bonds founded on applications forwarded from this state, or otherwise procure suretyship to be effected by such company upon the bonds of, or the bonds given to, persons or corporations in this state shall be deemed an agent of such company. [Amendment approved March 10, 1909; Laws 1909, p. 213.]

§ 4189a. Agent to Procure Certificate from Commissioner of Insurance.

(Section 13.) No person shall act as agent for such company without first procuring from the insurance commissioner a certificate of authority to act as such agent, the fees for such certificate of authority to be the same as those required of all insurance companies. [Amendment approved March 10, 1909; Laws 1909, p. 213.]

§ 4189b. Fee for Such Certificate.

(Section 14.) Every person who shall act as agent of any such company before it shall have complied with all the requirements of the laws of this state relating to such companies shall be fined one thousand dollars. [Amendment approved March 10, 1909; Laws 1909, p. 213.]

§ 4189c. Examination into Affairs of Surety Company.

(Section 15.) The insurance commissioner, either personally or by committee appointed by him, consisting of one or more persons not direc-

tors, officers, or agents of any surety company doing business in this state, may at any time examine the affairs of any surety company incorporated by or doing business in this state. The officers or agents of such company shall exhibit its books to said commissioner or committee and otherwise facilitate such examination, and the commissioner or committee may examine under oath the officers and agents of any such company in relation to its affairs. Said commissioner may, if he deem best, publish the result of such investigation in one or more newspapers published in this state, provided that nothing in this section shall be construed to repeal, limit or change the provisions of House Bill 76, Eleventh Legislative Assembly, approved February 13, 1909, relating to the examination of insurance companies. [Amendment approved March 10, 1909; Laws 1909, p. 213.]

§ 4189d. Revocation of License of Surety Company and Agents.

(Section 16.) When it shall appear to said commissioner from the statement of any such company or from an examination of its affairs that it is insolvent or is conducting its business fraudulently, or refuses or neglects to comply with the laws of the state relating to such companies, or, if any such company shall neglect or refuse to pay any final judgment or decree rendered against it upon any such bond, undertaking, recognizance or other obligation made or guaranty by it under the provisions of this act, from which no appeal, writ of error or supersedeas has been taken for ninety days after the rendition of such judgment or decree, it shall be the duty of the clerk of the court in which said judgment or decree was rendered to certify a copy thereof to the insurance commissioner, together with the fact that it remains unpaid; said commissioner shall revoke all licenses and the certificates of authority issued to such company and its agents, and he shall cause a notice thereof to be published in one or more newspapers published in this state, and the agent or agents of such company after such notice shall transact no further business in this state. All the expenses of an examination made under the provisions of section 13 shall be paid to said commissioner by the company examined, provided that nothing in this section shall be construed to repeal, limit or change the provisions of House Bill 76, Eleventh Legislative Assembly, approved February 13, 1909, relating to examination of insurance companies. [Amendment approved March 10, 1909; Laws 1909, p. 214.]

§ 4189e. Fees and Taxes Exacted of Surety Company.

(Section 17.) Every such company organized in this state apply— for admission to transact business in this state shall pay to the insurance commissioner, for the use of the state, ten dollars for filing the copy of its charter or articles of association, ten dollars for filing the statement preliminary to admission, and a like sum for each annual statement thereafter. Every such company organized under the laws of any other state, and admitted to transact business in this state, and each agent of every such company shall pay the same fees and taxes to the insurance commissioner of this state as are required by the laws of Montana from general insurance companies.

(Section 18.) Every such company organized under the laws of any other state and admitted to transact business in this state, and each agent of every such company, shall pay the same fees and taxes to the insurance commissioner of this state as are imposed by such other states upon any similar companies incorporated by or organized under the laws of this state

or upon the agents of any such companies transacting business in such other state. [Amendment approved March 10, 1909; Laws 1909, p. 215.]

§ 4189f. Reserve Fund for Reinsurance.

(Section 19.) Every surety company or association chartered by or doing business in this state and having the power to execute or guarantee surety or fidelity bonds or obligations, or guarantee the validity of titles or written instruments, shall at all times keep and maintain a reserve fund for reinsurance equal to fifty per centum of the gross amount of premiums received on business in force. [Amendment approved March 10, 1909; Laws 1909, p. 215.]

§ 4189g. Annual Statement of Surety Company—Order to Cease Business.

(Section 20.) Every such company or association shall, in its annual statement to the insurance commissioner, report the gross amount of its risk outstanding on the thirty-first day of the previous December, classifying such risks in such manner as the commissioner shall direct, and shall report the amount of its reserve fund as a liability in such annual statement; and the commissioner may order any such company or association to cease doing business in this state whenever, upon examination of such company or association, he shall find that it has failed to comply with any provision of section 19, this act, or section 21 of this act. [Amendment approved March 10, 1909; Laws 1909, p. 215.]

§ 4189h. Limit of Liability to be Incurred by Surety Company.

(Section 21.) No such company shall incur in behalf or on account of any one person, partnership, association, or corporation, a liability for an amount larger than one-fourth of its paid-up capital and surplus, unless it shall be secured from loss thereon beyond that amount by suitable and sufficient collateral agreements of indemnity, by deposit with it in pledge, or conveyance to it in trust for its protection, of property equal in value to the excess of its liability over such limit, or, in case such liability is incurred in behalf or on account of a fiduciary holding property in a trust capacity, by such deposit or other disposition of a sufficient portion of the estate so held that no further sale, mortgage, pledge, or other disposition can be made thereof without such company's approval, except by the decree of a court having proper jurisdiction. [Amendment approved March 10, 1909; Laws 1909, p. 216.]

§ 4189i. Estoppel to Deny Corporate Power.

(Section 22.) No company which has executed any bond as surety under the provisions of this act shall deny, in any proceedings for enforcing the liability which it assumed to incur, its corporate power to execute such instrument or assume such liability. [Amendment approved March 10, 1909; Laws 1909, p. 216.]

§ 4189j. Cost of Surety Bond to be Allowed in Account of Officer.

(Section 23.) Any court or officer whose duty it is to pass upon the account of any person or corporation required by law to give a bond may, whenever such person or corporation has given any such surety company as surety upon such bond, allow in the settlement of such account a reasonable sum for the expense of procuring such surety. [Amendment approved March 10, 1909; Laws 1909, p. 216.]

§ 4189k. Return of Deposits or Securities to Surety Company.

(Section 24.) Any and all deposits of money, securities or other property heretofore deposited by any foreign surety company in compliance with any law, of this state shall be returned to and paid over to the company making such deposit within thirty days after this act shall be in force and effect. [Amendment approved March 10, 1909; Laws 1909, p. 216.]

§ 4189l. Discrimination by Foreign Surety Companies.

(Section 1.) It is hereby made the duty of all surety companies not organized under the laws of the state of Montana, but authorized to transact business therein, and doing business in said state, to provide all necessary bonds or undertakings for all residents of said state who shall make application therefor, and to furnish all such bonds or undertakings to all such applicants upon the same terms and conditions and without discrimination.

(Section 2.) In case of the refusal of any such company to provide or furnish any applicant with a bond or undertaking, the applicant may file in the district court of the county of his residence a petition setting forth the facts and praying that such company be required to provide or furnish the bond or undertaking required; whereupon the judge of said court shall issue a citation to such company commanding it to show cause, at a time and place to be named, in the citation, why it does not provide or furnish such bond or undertaking. At the time designated in the citation for answering the same the said judge shall proceed summarily to hear the petition, If it shall appear that the refusal was made in good faith and for good and sufficient reasons, and that a written statement of such reasons had been theretofore furnished to said applicant as hereinbefore required, the petition shall be dismissed; but if the said company shall fail to establish that its refusal was in good faith, and for good and sufficient reasons, judgment shall be rendered against it, commanding it to furnish or provide such bond, within a time to be fixed by the judgment.

(Section 3.) Should any such company fail to comply with any such judgment its right to transact business in Montana shall thereupon cease, and an order shall be entered in the said proceedings, after notice to it, adjudging its right so to transact business in Montana to be forfeited and commanding it to desist and refrain from transacting any business in the state, or from soliciting any such business without it, which order may be enforced in the same manner as injunctions generally; a certified copy of such order shall forthwith, on the entry of the same, be transmitted by the clerk of the district court in which said proceedings are had, to the state auditor who shall file the same in his office and immediately revoke the license of the said company and thereafter any person, association or corporation which may exact or require of any person, or make it a condition of employment, or the retention of employment, that he make or execute any bond or undertaking with such company as surety shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000); provided, however, nothing herein shall be so construed as to deprive either party to such proceedings of the right of trial of any question of fact therein, by a jury.

(Section 4.) The provisions of the Code of Civil Procedure shall be applicable to the proceedings authorized by this act except as herein pro-

vided, and except that an appeal from either the judgment or order in such action may be taken by the petitioner of the surety company to the supreme court but such appeal must be taken within sixty days after the same shall have been entered. [Approved March 1, 1909; Laws 1909, c. 40, p. 47.]

§ 4189m. Bond of Warehousemen—Charges Therefor.

(Section 1.) Hereafter it shall be unlawful for any firm, copartnership, or corporation, whether incorporated within the state of Montana or not, transacting business in this state as a surety and fidelity company, to exact, charge for, or receive any greater rate of premium for any bond, contract, recognizance, stipulation, or undertaking required and issued under the provisions of the laws of Montana for public warehousemen, than the sum of two dollars for each one thousand dollars of said bond, contract, recognizance, or undertaking.

(Section 2.) The state insurance commissioner of the state of Montana is hereby prohibited from authorizing any surety and fidelity company to exact or charge a greater premium than in the act provided. [Approved March 5, 1915; Laws 1915, c. 71, p. 98.]

§ 4193.

If a person executes a note to a building and loan association, is sued thereon, and seeks to avoid payment of the note according to its terms, or to discharge the obligation assumed in it through a compliance with the statute, it is necessary for him, by his pleading, to bring himself within the class of those persons to whom the statute applies; he must show that he is a member, either as a holder of stock certificates or otherwise; if he fails to do this, evidence offered by him, tending to show that the loan was canceled by a compliance, on his part, with the provisions of this section, is incompetent.

Western L. & S. Co. v. Smith, 42 Mont. 442, 450, 113 Pac. 475.

Facts stated in an answer, not warranting any relief, under this section, to a defendant sued on a note given to a building and loan association. *Western L. & S. Co. v. Smith*, 42 Mont. 442, 450, 113 Pac. 475.

Editorial Notes.

What is building and loan association. Ann. Cas. 1914A, 697.

Loan contract as usurious in absence of statute. Ann. Cas. 1914C, 1305.

Contracts of building and loan associations, whether and when usurious. 83 Am. Dec. 612.

ASSOCIATIONS AND SOCIETIES.

§ 4216. Co-operative Associations—Shares of Stock.

The share of stock shall not be less than ten dollars nor more than five thousand dollars per share, and may be made payable in installments, and every co-operative association may divide its shares of stock into classes of different par values, and the owners thereof shall share in the profits of the association in proportion to the par value of their shares, provided, however, that the owners of the said shares in the different classes shall have the same power and vote in the association. Forfeiture of the stock for nonpayment of installments may be provided for in the by-laws, and whenever a share of stock is forfeited such share shall become the property of the association, and may be reissued to any person not already holding a share; but any proceeds received from such reissue, over and above the amount due on said share, by the association, shall be paid to the delinquent shareholder. The stock heretofore issued in classes of different par values by any co-operative association is hereby legalized and made valid. [Amendment approved February 5, 1909; Laws 1909, p. 4.]

§ 4218. Exemptions—Shares of Decedents.

The share, not exceeding the par value of five hundred dollars, of each member shall be exempt from seizure on attachment, or sale under execu-

tion, and upon his death shall be sold by the association, and the proceeds, after deducting all liabilities to the association, shall be delivered to his heirs. [Amendment approved February 5, 1909; Laws 1909, p. 5.]

§ 4220a. Co-operative Associations—Stockholders Voting by Mail.

(Section 1.) At any regularly called general or special meeting of the stockholders of co-operative associations a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing; provided, he has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of the same is forwarded with and attached to the vote so mailed by him. [Approved March 5, 1915; Laws 1915, c. 83, p. 109.]

§ 4220b. Dividends—Reserve and Educational Funds.

(Section 2.) The directors of a co-operative association, subject to revision by the stockholders at a general or special meeting, may apportion the earnings of the association by first paying dividends on the paid-up capital stock not exceeding eight per cent per annum on the par value thereof, from the remaining funds, if any, accessible for dividend purposes not less than five per cent of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to thirty per cent of the paid-up capital stock and from the balance, if any, five per cent for an educational fund to be used for teaching co-operation and the remainder of said net profits, if any, by uniform dividends upon the amount of purchases of shareholders and upon the wages and salaries of employees, and one-half of such uniform dividend to nonshareholders on the amount of their purchases, which may be credited to the account of such nonshareholders on account of capital stock of the association; but in productive associations such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons. [Approved March 5, 1915; Laws 1915, c. 83, p. 109.]

§ 4220c. Distribution of Earnings—Dissolution of Concern.

(Section 3.) The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the by-laws shall prescribe, which shall be as often as once in twelve months. If such associations for five consecutive years shall fail to declare a dividend upon the shares of its paid up capital, the holders of the majority of the par value of the issued and outstanding capital stock, by petition, setting forth such fact, may apply to the district court of the county, wherein is situated its principal place of business in this state, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association. [Approved March 5, 1915; Laws 1915, c. 83, p. 109.]

§ 4220d. Existing Co-operative Associations to have Benefit of Act.

(Section 4.) All co-operative corporations, companies or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business shall have the benefit of all

of the provisions of this act [§§ 4220a-4220d herein], and be bound thereby on filing with the Secretary of State a written declaration signed and sworn to by the president and secretary to the effect that said co-operative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions of this act. No association organized under this act shall be required to do or perform anything not specially required herein in order to become a corporation or to continue its business as such.

(Section 5.) All acts and parts of acts in conflict herewith are hereby repealed. [Approved March 5, 1915; Laws 1915, c. 83, p. 110.]

RELIGIOUS ORGANIZATIONS.

§ 4225. Incorporation of Religious or Benevolent Society.

It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect: "Resolved, that the trustees of this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), to wit: (A, B, C, D, etc., giving the names of the duly elected trustees or directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law." The trustees or directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. In case two or more of the associations mentioned in this chapter own or are desirous of owning real or personal property conjointly and managing the same conjointly, where pecuniary profit is not the object, they may each by resolution adopted in the same manner as hereinabove provided in this section instruct their trustee or director, or trustees or directors, respectively, to act in conjunction in incorporating under the provisions of this chapter, and in the articles of incorporation, or in their respective by-laws, may provide for the annual election of the trustees of the corporation who shall succeed those named in the articles of incorporation. [Amendment approved March 6, 1909; Laws 1909, p. 136.]

§ 4226. Number of Directors—Articles of Incorporation—Powers.

The trustees or directors of whom there must not be less than three and not more than thirteen in the aggregate, named in such resolution or resolutions may thereupon make, file and record in the office of the county clerk of the county where such association or associations is or are located, if such association or associations be local or subordinate associations, or in the office of the Secretary of State if such association be a state, representative, supervisory, governing or grand organization or body articles of incorporation and must attach to such articles a copy of the resolution or resolutions provided for in section 861 of the Civil Code, being section 4225 of the Revised Code of Montana of 1907 certified to by the president or other presiding officer and the secretary or other recording officer of such meeting or meetings. In lieu of the requirements of section 3818 (403) of this code of such articles of incorporation must contain the following:

1. The name of the corporation.
2. The purpose for which it is organized.
3. The number of trustees or directors for the first year of the corporate existence of such incorporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law and enforce the same by appropriate penalties, have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest personal or real estate, and may use and dispose thereof only for the purpose for which the corporation is organized. [Amendment approved March 6, 1909; Laws 1909, p. 137.]

§ 4229a. Religious Organization—Incorporation, Power and Management of Diocesan Corporation.

(Section 1.) Religious corporations partaking, holding, receiving and disposing of any real or personal property for the use and benefit of any diocese now or hereafter existing of any religious denomination in the state, and for administering the temporalities thereof, and for the further purposes, and with the powers hereinafter specified may be created in the manner and with the powers, privileges and franchises herein stated, to wit:

The bishop of any diocese in which any such corporation is to be located may associate with himself the vicar-general and chancellor of such diocese, if such dignitaries or officers there be in his denomination, and if not, then such dignitaries or officers as may be next in order to him, according to the rules or organization of his denomination, and two in number, and in any such case these three, or a majority of them, may designate and associate with themselves, or may cause to be selected in accordance with the rules of any such denominations to which they may belong two other members of the same religious denomination, and residents of such diocese, and upon adopting, signing and acknowledging, in duplicate, a certificate, or articles of incorporation reciting the facts of the association, and of the selection and designation of such two additional persons and containing the same, general purpose, and place of location of such corporation and filing of one of said duplicates in the office of the county clerk and recorder of the county in which the place of location of such corporation is to be situated, and the other in the office of the Secretary of State of this state; the said five persons and their successors in office shall become a corporation with power to take, hold, receive and dispose of any real or personal property, or both, for the use and benefit of such diocese, and for the use and benefit of the religious denomination therein, constituting such diocese, and to administer the temporalities of such diocese, and to establish and conduct schools, seminaries, colleges, and any benevolent, charitable, religious or missionary work, or society of such religious denominations within such diocese, with all the powers and privileges of religious corporations, and shall be capable of suing and being sued, holding, purchasing and receiving title by devise, gift, grant, or otherwise, of and to any property, real and personal, and shall have power to mortgage, sell and convey the same, or any part thereof, and may adopt and establish by-laws, and make all rules and regulations, deemed by them necessary or expedient for the management of its affairs in accordance with law. The persons who may hold the office respectively of bishop, vicar-general and chancellor in such denomination, within and for such diocese, and their successors in office, or the two persons who may hold offices next in rank to that of bishop in any denomination, not having officers or dignitaries designated by name as vicar-general, or chancellor, shall, by virtue of their respective offices, always be members of such corporation, but on ceasing to hold such office, the corporate membership of each shall at once cease; the

term of office of such two persons selected and designated as aforesaid in addition to the bishop, and two other officers or dignitaries, shall be two years from the time of their appointment, and until their respective successors are chosen, and have accepted such office. The successors, respectively of such two persons so selected by the said bishop, vicar-general and chancellor, and so signing such articles of incorporation, or incorporators, shall unless otherwise provided in the articles of incorporation always be chosen by the said other three corporators, namely, the bishop, vicar-general and chancellor, or by any two of them in the case of any denomination having dignitaries designated by these names, and wherever a vacancy shall occur in such membership as to any such corporator so selected, and as often as any such vacancy shall, for any cause, occur, whether by expiration of term, by resignation, death or otherwise, the aforesaid three official corporators shall have power to fill such vacancy; provided, however, that in any denomination having a bishop, but not having a vicar-general or chancellor, by such name designated, then these powers shall be exercised by the bishop, and the other official corporators, or any two of them. Every such appointment shall be in writing and entered of record in the minutes of the corporation, and such appointees shall be members of such religious denomination, and residents of the diocese in which the corporation is located. Any corporator so selected may at any time resign, and thereby cease to be a member of such corporation. Such resignation and its acceptance shall be entered on the minutes of said corporation. In case of vacancy in the office of bishop, or of a temporary suspension of his powers to act, the administrator of the diocese, or such other person as may be appointed according to the rules of the particular denomination, to preside over and administer the spiritual and temporal affairs of the diocese during such vacancy, or suspension of powers of the bishop, and while he is such administrator or appointee shall be a member of said corporation with all the powers of such corporator that are by this act vested in such bishop, and may act in his place and stead, but his membership shall at once cease whenever such vacancy in the office of bishop shall be filled, or such bishop shall be no longer incapacitated to act by reason of such suspension of his authority. Any member of such corporation may, by writing signed by him, appoint a proxy to represent and act for him, and in his name and stead to vote at any meeting of such corporation. [Approved March 14, 1913; Laws 1913, c. 87, p. 383.]

§ 4229b. Formation and Powers of Parish or Local Religious Corporations.

(Section 2.) Whenever, and as often as it may be deemed advisable, or desired by the bishop of any religious denomination within the state of Montana, to have created or organized any parish or local religious corporation within the state for the purpose, and with the powers hereinafter specified, he may associate with himself the vicar-general of the same diocese, if there be such a dignitary or officer in such denomination, or if not, then the dignitary or officer next in rank to the bishop in said diocese, and the pastor or rector or dignitary performing the function of a pastor or rector in the particular denomination, and of the parish or local congregation wherein any such corporation is to be located, and which shall be within the diocese of such bishop, and the said bishop, vicar-general, and pastor or rector shall select, designate, and associate with themselves, two lay members of such denomination within the parish, or other subdivision, under the care of such pastor or rector, and the said five persons upon

adopting, and signing, and acknowledging in duplicate, a certificate or articles of incorporation, reciting the fact of the association, and of the selection of such laymen as aforesaid, and containing the name, general purpose and place of location of such corporation, and having one of said certificates, or articles, recorded in the office of the county clerk and recorder of the county in which such parish or congregation is located, and the other in the office of the Secretary of State of this state, the said five persons shall become a corporation, and be invested with all the rights, powers, privileges, of a religious corporation, and they, and their successors in office, in such corporation, to wit, the said corporation, shall be capable of suing and being sued, holding, purchasing and receiving title by devise, gift, grant or otherwise of and to any property, real or personal, or both, and shall have power to mortgage, sell or convey the same, or any part thereof, subject always to the rules of the denomination to which such corporators may belong, and may adopt and establish by-laws, and make all rules and regulations necessary or expedient for the management of its affairs. The persons at any time holding the offices hereinbefore specified in the denomination, and in the diocese in which such corporation is located, together with the pastor or rector, or other person in charge of such denomination in the parish, or congregation, where such corporation is located, and the successor in office of each one of said officers with such diocese, parish or congregation, shall, by virtue of his respective office be a member of and with the two laymen selected and appointed, as aforesaid, shall constitute such corporation. But no person shall have authority to subscribe such articles as bishop, vicar-general, pastor or rector, or other official capacity, unless such person is at the time in the occupancy of the particular office, and recognized as such by the proper authority of his denomination, and every such person on ceasing to hold such office in his denomination shall, thereupon cease to be a member of the corporation, and his successor in office shall become entitled to his place in such corporation. The two laymen, or their successors, shall continue the other members of said corporation. The term of office of each of the two laymen hereinbefore mentioned, and to be designated as aforesaid, shall be two years from the date of the certificate or articles, and thereafter the term of each of the lay members shall be two years from the corresponding date in subsequent years, and until his successor shall have been appointed, and shall have accepted the office. The laymen thus to serve as corporators, or members of such corporation, shall, unless otherwise provided in the articles of incorporation, always be chosen by said other three corporators, to wit, by the said official corporators, or any two of them, and the said last-named corporators, or any two of them shall have power at all times, whenever a vacancy shall occur in the membership as to either of said lay corporators, and as often as any such vacancy may for any cause occur, have power to fill such vacancy. Every such appointment shall be in writing and entered of record in the minutes of the corporation. Any lay corporator may resign his office as corporator, and thereby cease to be a member of such corporation. His resignation shall always be entered on the minutes of said corporation. Should there be, at any time, a vacancy in the office of the bishop belonging to any such corporation, or if there be at any time a person other than the bishop appointed in his stead to administer the spiritual and temporal affairs of said diocese, then during the time of such vacancy or such suspension of the authority of the bishop, the administrator of the diocese of the said bishop, or such other person as may be appointed accord-

ing to the rules of his denomination to preside over and administer the spiritual and temporal affairs of such diocese shall, while he is such administrator or appointee, be a member of such corporation, with all the powers of such corporator, that are by this act vested in such bishop, and may act in his place and stead in such corporation, but his membership shall at once cease whenever such vacancy in the office of bishop shall be filled, or such suspension of authority or incapacity to act shall be removed, or shall cease. If any diocese now existing, or hereafter created within any such corporation belonging to such denomination, shall be at any time subdivided according to the rules and practices of such denomination, and one or more new dioceses be formed therefrom, or from parts thereof, the bishop and vicar-general, or the dignitary next in rank to the bishop of such new diocese, and their successors in office, shall also appoint and institute, and by virtue of their respective offices forthwith become members of any such corporation within such new diocese, with all the rights, duties, privileges, powers and obligations of such members. And the bishop, and vicar-general, or dignitary next in rank to the bishop of the diocese in which such corporation, or corporations, may or were located, prior to such subdivision shall henceforth cease to be members of such corporation, and all of the provisions of this section shall apply, and continue to apply to any such new diocese, and to any such corporation or corporations therein located, with the same force and effect as in the old diocese. [Approved March 14, 1913; Laws 1913, c. 87, p. 386.]

§ 4229c. Repeal or Modification of Existing Laws.

(Section 3.) Nothing herein contained shall be construed as repealing or modifying any existing provision of law regarding religious corporations, and the provisions of this act shall be deemed additional and alternative provisions.

(Section 4.) This act shall take effect and be in full force from and after its passage and approval by the Governor. [Approved March 14, 1913; Laws 1913, c. 87, p. 388.]

CEMETERIES.

§ 4240. Cemetery Associations—Incorporation—Eminent Domain.

Whenever such certificate is duly acknowledged and recorded and filed as provided in the last section, the association mentioned therein shall be deemed legally incorporated, and shall have the general powers and privileges of corporations, with the right to sue and be sued and to continue perpetually, and in addition thereto such corporations shall have the right and power to take private property for public use to be used exclusively for a cemetery or place of burial of the dead.

Such power of eminent domain to be exercised under the provisions of sections 7330 to 7355 inclusive of the Revised Codes of Montana of 1907. [Amendment approved March 4, 1911; Laws 1911, p. 172.]

§ 4256. Cemetery Associations—Permanent Improvement Fund.

That any association formed under the provisions of this act, or any corporation heretofore formed under the laws of this state, which shall have established and be maintaining a cemetery, shall provide in the manner set forth in this title, for the establishment and maintenance of a permanent fund, the income of which shall be devoted to the care, maintenance and improvement of such cemetery, which fund shall be known as the "Perma-

nent Care and Improvement Fund" of such cemetery association. [Amendment approved March 8, 1909; Laws 1909, p. 180.]

§ 4257. Trustees of Fund.

Whenever moneys to the amount of one hundred (100) dollars, shall have been received by such corporation, heretofore or hereafter formed for such a fund, either from the sales of lots or from direct payments of such corporation towards such a fund by lot owners, the trustees of such association shall proceed at once to choose by ballot and appoint by deed of the association, a board of trustees of such fund. Such board shall consist of not less than three nor more than five persons, the exact number to rest in the discretion of the said trustees of said association. Such trustees of said fund must be citizens and freeholders of the state of Montana during all the time they exercise the power of such trust. Upon the election, appointment and qualifications, as hereinbefore provided, of the said trustees of such fund, all the title to the funds included in said trust, and all the rights, powers, authorities, franchises and trusts whatsoever thereunto appertaining shall at once vest in them; or, in case of the failure of any of those so chosen and appointed to qualify within thirty days after their appointment, then the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, the one or more who shall have so qualified shall forthwith fill all vacancies in the said board of trustees of such fund, by choosing and appointing by deed persons to be such trustees upon qualification. And such trustees of the fund shall have power in the same manner to revoke any choice and appointment, and to appoint any other person to be such trustee in any case where one chosen and appointed shall fail to qualify as herein provided, within thirty days after appointment. All appointments to fill vacancies and all revocations must be made unanimously. [Amendment approved March 8, 1909; Laws 1909, p. 181.]

§ 4262. Powers of District Court.

In case of the failure of the trustees of such an association to appoint a board of trustees of such a fund or in case of the death, removal, resignation or disability of all the members of such board, the said rights, titles, interests, authorities, powers, franchises and trusts, until the organization of a new board of such trustees, shall vest in the district court, in which such cemetery, or the greater part thereof shall be situate. In such cases such board of trustees may be appointed by said district court, on application of any person interested, on notice to such other persons interested as the court may order. The trustees so appointed to and accepting such trust shall become vested with all the aforesaid titles, estates, interests, authorities, powers, franchises and trusts belonging thereunto, upon qualification as hereinbefore provided.

In case of any vacancy or vacancies continuing in the board of trustees of such fund for the period of six months, such vacancy or vacancies may be filled by the said district court in like manner. All trustees appointed by such court under the provisions of this section, shall have all the same rights, powers, authorities and franchises as trustees appointed under the other sections of this act. The district court shall have power to compel an accounting of such fund and its income from the cemetery association or the trustees of said fund, upon the application of any interested party. Any owner of an interest in any lot of the cemetery cared for by such trust,

any trustee of the cemetery association and any trustee of the said trust fund shall have the right to make any application to the court, provided for in this title. [Amendment approved March 8, 1909; Laws 1909, p. 182.]

§ 4264. Transfer of Fund.

That from and after the passage and approval of this act, the trustees of such cemetery association as are mentioned in section 4256 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such "Permanent Care and Improvement Fund," of not less than fifteen (15) nor more than forty (40) per cent of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots; and such transfer of any such funds then on hand shall then and there be made; such transfers shall be made thereafter quarterly, upon the first days of January, April, July and October of each year, to the trustees of such fund. If at any time there shall remain in the hands of such association unexpended money over and above the liabilities of the association, the board of trustees of such association may by a two-thirds vote, appropriate the whole or any portion of such unexpended moneys to such "Permanent Care and Improvement Fund," provided, that such fund, (exclusive of such portion thereof as may have been paid in by owners of lots for the care of such lots,) shall never in any case be allowed to exceed the sum of five thousand (5000) dollars per acre, of the cemetery to be cared for therewith; and when such fund shall reach such amount all appropriations and payments thereto shall cease. [Amendment approved March 8, 1909; Laws 1909, p. 182.]

§ 4266. Use of Income of Fund.

The income of that portion of such fund received from the sale of lots, shall be used, in the discretion of the trustees of such association, solely for the care, maintenance and improvement of such cemetery, its grounds, roads, walks and avenues leading thereto, except as herein provided. The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots, shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes, for one year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal. Hereafter all cemetery corporations shall distinctly specify in all conveyances of lots therein, the percentage of the price received therefor to be transferred under the provisions of this Title to the "Permanent Care and Improvement Fund" of such corporation, and also, such further sum, if any there be, paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed, so to be transferred as hereinbefore provided. [Amendment approved March 8, 1909; Laws 1909, p. 183.]

RAILROADS.

§ 4274.

Validity of acts of quorum. See note ante, § 3836.

This section fixes five as the minimum number of directors of a railroad corporation. *Great Falls etc. Ry. Co. v. Ganong*, 48 Mont. 54, 56, 136 Pac. 390.

§ 4275.

Rule of necessity in eminent domain. See note post, § 7334.

The language of this section, "not exceeding in width one hundred feet on each side of its center line," is not a grant but a limitation; in the absence of any neces-

sity for additional grounds for excavation or embankment, the strip two hundred feet wide simply marks the utmost limits of the extent of land which a railroad company having a superior equity may take in invitum for roadway or right of way purposes. *Great Falls etc. Ry. Co. v. Ganong*, 48 Mont. 43, 50, 136 Pac. 391.

The right of a railway company to condemn land for right of way purposes is confined to its reasonable necessities. *Great Falls etc. Ry. Co. v. Ganong*, 48 Mont. 43, 51, 136 Pac. 391.

No obligation is imposed upon any company to take the full amount permitted by the fourth subdivision of this section; and, in the absence of any necessity, it cannot do so, either as against the will of the owner or the necessities of a competing road. *Great Falls etc. Ry. Co. v. Ganong*, 48 Mont. 43, 51, 136 Pac. 391.

The privilege of taking a strip two hundred feet wide, for right of way purposes, may be accepted or it may be waived; and it is waived by taking a less amount. *Great Falls etc. Ry. Co. v. Ganong*, 48 Mont. 43, 51, 136 Pac. 391.

Evidence insufficient to sustain a finding that a strip of land had already been appropriated by another company "for a public use of equal necessity," namely, for right of way purposes, under the fourth subdivision of this section. *Great Falls etc. Ry. Co. v. Ganong*, 48 Mont. 43, 48, 54, 136 Pac. 391.

§ 4289.

A railroad company's failure to obey the requirements of the statute does not excuse the citizen from the use of at least ordinary diligence and prudence. *Sprague v. Northern Pac. Ry. Co.*, 40 Mont. 481, 489, 107 Pac. 412.

A railroad company, whose employees in charge of a train fail, upon approaching the crossing of a highway, to observe the precautions required by this section for the protection of the public, is chargeable with negligence; and there can be no distinction between the effect of a statute designed to protect the public generally at railroad crossings and one, such as section 8536, post, designed to secure safety to servants engaged in hazardous occupations. *Monson v. La France Copper Co.*, 39 Mont. 50, 61, 133 Am. St. Rep. 549, 101 Pac. 243.

Evidence that shows a violation, by a railroad company, of the provisions of this section, in failing to give proper signals of the approach of its trains at crossings, makes out a prima facie case of negligence. *De Atley v. Northern Pac. Ry. Co.*, 42 Mont. 224, 230, 112 Pac. 76.

Immaterial variance under this section. *De Atley v. Northern Pac. Ry. Co.*, 42 Mont. 224, 230, 112 Pac. 76.

§ 4295.

Legislative intent to maintain distinction between "railroads" and "street railroads." See note ante, § 3259.

§ 4299.

If a foreign railroad company, engaged as a common carrier of passengers between different states, seeks to engage in interstate commerce in this state, buys or is about to buy out another railroad, and seeks to avail itself of the benefits of this section, which requires the filing of its charter or articles of incorporation with the Secretary of State, it is not obliged to pay a fee, under section 165, ante, for the filing of articles of incorporation, on the basis of a percentage of its entire capital stock; the exaction of such a fee would be an unauthorized burden upon interstate commerce, and any law authorizing it is, to that extent, unconstitutional. *Chicago etc. Ry. Co. v. Swindlehurst*, 47 Mont. 119, 126, 130 Pac. 966.

§ 4308.

The failure of a railroad company to maintain fences and cattle-guards does not make it answerable, on that ground, for the death of a child, who entered upon the unfenced track and was run over by a train and killed. *Nixon v. Montana W. & S. Ry. Co.*, 50 Mont. 95, 145 Pac. 8.

Editorial Notes.

Depot or station grounds within purview of statute requiring railroad to fence tracks. *Ann. Cas.* 1912D, 628; 11 *Ann. Cas.* 20; 7 *L. R. A.* (N. S.) 203.

Meaning of "adjacent" in statute relating to fencing railroad property. *Ann. Cas.* 1913B, 172.

Constitutionality of statute requiring fence. 31 *L. R. A.* (N. S.) 862.

§ 4310.

Lease construed as exempting railway company from liability for loss occasioned by fire incident to or arising from railway operation, but not exempting it for loss arising from fire due to the railway company's violation of this section. *Cooper v. Northern Pac. Ry. Co.*, 212 Fed. 533, 535.

§ 4323.

Considering the provisions of sections 970, 2876, and 2878 of the Civil Code together, it must be concluded that, in the absence of a special contract limiting a carrier's liability, the provisions of section 970 authorize the recovery by a passenger of the actual value of baggage lost. *Rose v. Northern Pac. Ry. Co.*, 35 Mont. 70, 78, 119 Am. St. Rep. 836, 88 Pac. 767.

§ 4325.

Exemplary damages for failure to stop and take up passengers. See note post, § 6047.

This section simply declares just what the rule of law applicable in an ordinary negligence action would be in the absence of the statute. *Burles v. Oregon etc. R. Co.*, 49 Mont. 129, 131, 140 Pac. 513.

§ 4330.

A railway company may sell an excursion ticket for a special or reduced fare; and, in such a ticket, the company may restrict its liability and curtail its obligations. *Miley v. Northern Pac. Ry. Co.*, 41 Mont. 51, 55, 108 Pac. 5.

A person who has purchased a ticket at a price below the regular fare, cannot maintain an action for the penalty provided

in this section. *Miley v. Northern Pac. Ry. Co.*, 41 Mont. 51, 55, 108 Pac. 5.

§ 4337.

If a penalty is attached to the violation of a statute it should be construed, with respect to that, as are other penal statutes; but that portion which seeks to prohibit, in general terms, unjust discrimination between individuals should be liberally construed. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 43, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

Considered in *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 37, 43, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

Editorial Notes.

Right of passenger to recover damages for refusal of carrier to transport him at reduced rate charged to other persons of same calling. *Ann. Cas.* 1912A, 159.

§ 4362a. Persons or Property may be Transported Free or at Reduced Rates in Certain Cases.

(Section 1.) Nothing in provisions of Chapters 4 and 5, Title VIII, of the Political Code, Revised Statutes of Montana, 1907, or in any other provisions of the laws of the state of Montana, shall be construed to prevent, or shall prevent any person, association, company, or corporation engaged as a common carrier of persons, or property in the state of Montana from carrying, storing, or handling property free, or at reduced rates, for the United States, state or municipal governments, or for charitable institutions, or property which is being transported to, or from fairs and expositions for exhibit thereat, or cars used by the government of the United States or state of Montana for the transportation of fish, or for carrying free or at reduced rates agents and employees employed in such transportation and nothing therein contained shall prevent such person, association, company, or corporation from issuing free transportation, or selling tickets at reduced rates to the following classes of persons:

Employees of the issuing road and the members of their families.

Officers and employees of other railroads and the members of their families upon the exchange passes or tickets.

Doctors, nurses and helpers being carried to wrecks.

Soldiers or sailors going to or coming from institutions for their keeping.

Ministers of religion and persons engaged in charitable or religious work, and destitute or homeless persons being transported by charitable societies or at public expense.

Executive, judicial or legislative officers of the state of Montana, including the state game warden and his deputies, the members of the state board of horticulture, members of the faculty of the different educational institutions of the state, officers, trustees or employees of the State Fair, officers and inspectors of the livestock and sheep commission boards. Provided, however, that when free transportation, or a ticket at a reduced rate shall be issued to any such officer, state game warden, or deputy, or any member of the said board of horticulture, or any president or member of the faculty of any educational institution

that the same shall only be issued upon the application of the Secretary of the State, and the said transportation, or ticket shall be delivered to the Secretary of State for delivery to the person, or persons, applying therefor, and the Secretary of State shall keep record of all transportation, and tickets at reduced rates so received and delivered by him, provided further that such state officer, state game warden, and deputies and members of the state board of horticulture, and the president and faculty of the state educational institutions when traveling upon any free transportation shall not be entitled to charge any mileage against the state, or if traveling upon a ticket sold at reduced fare they shall not be entitled to charge mileage in excess of the cost of said ticket.

(Section 2.) The carrying free, or at reduced rates, of property or persons in any of the classes above specified, shall be held to be a reasonable classification by railroad companies for such purposes and not to be unjust discrimination, and the carriage and transportation by any railroad company, at free or reduced rates, in any of the cases above specified, shall be held not to be a violation of any of the provisions of the laws of Montana, or subject said railroad company to any penalty therefor. [Approved March 4, 1913; Laws 1913, c. 53, p. 102.]

§ 4362b. Reduced or Free Transportation by Carriers.

(Section 1.) No common carrier of passengers shall directly or indirectly issue, furnish or give any free ticket, free pass or free transportation for the carriage or passage of any person within this state except as permitted in section 2 of this act. Nor shall any common carrier in the sale of tickets for transportation at reduced rates, discriminate between persons purchasing the same, except the person described in section 2 of this act. The words "free ticket," "free pass," "free transportation" as used in this act shall include any ticket, pass, contract, permit or transportation issued, furnished or given to any person by any common carrier of passengers for carriage or passage, for any other consideration than money paid in the usual way at the rate, fare or charge, open to all who desire to purchase.

(Section 2.) The persons to whom free tickets, free pass, free transportation and discriminating reduced rates may be issued, furnished or given are the following, to wit: (a) The officers, agents, employees, attorneys, physicians and surgeons, of such common carriers of passengers; (b) to the families of the persons included in subdivision "a" thereof; (c) the general officers of any such common carrier; (d) employees of sleeping-car and express-car companies, and linemen of telegraph and telephone companies, railway mail service, employees, postoffice inspectors, custom inspectors and immigration inspectors, newsboys on trains, baggage agents; (e) persons injured in wrecks and physicians and nurses attending such persons; (f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation; (g) necessary caretakers of livestock, vegetables and fruit, including return transportation to forwarding station; (h) the officers, agents, or regularly accredited representatives of labor organizations, composed wholly of employees of railway companies; (i) inmates of homes for the reform or rescue of the vicious or unfortunate, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents of such

homes; (j) superannuated and pensioned employees and members of their families and widows of such members; (k) employees, crippled and disabled in the service of the common carrier of passengers; (l) policemen and firemen of any city, wearing the insignia of their office within the limits of such city; (m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; (n) indigent destitute and homeless persons, while being transported by charitable societies or hospitals, and necessary agents, employees in such transportation; (o) school children to and from public or parochial schools; (p) the railroad commission of Montana and its necessary employees, while traveling on official duty. The provisions of this act shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes or free transportation may be furnished or given under the provisions of this section. Nothing in this act shall be construed to invalidate any existing contract between a street railway company and a city where a condition of a franchise grant requires the furnishing of transportation to policemen, firemen, and officers while in the performance of official duties.

(Section 3.) Any common carrier, its officers or agents or representatives, violating any of the provisions of this act shall be fined in the sum of not less than ten dollars (\$10) nor more than three hundred dollars (\$300), for each offense and any person other than the persons excepted in section 2 of this act who accepts or uses any free ticket, free pass or free transportation for carriage or passage within this state, shall be subject to a like penalty. [Approved March 10, 1911; Laws 1911, c. 136, p. 385.]

See the preceding section enacted subsequently to this.

§ 4362c. Shipment of Livestock—Notice of Injury.

Any provision, stipulation or condition in any shipping contract, bill of lading or other agreement hereafter made or entered into by or between any common carrier and the owner or shipper of any shipment of livestock, providing that written or verbal notice of loss, injury or damage thereto or of claim therefor, shall be made or given to any common carrier or to any agent or officer of any common carrier or to any other person within any period less than four months from the date of the occurrence of any such loss, injury or damage, shall be void and of no effect. [Approved March 10, 1909; Laws 1909, c. 138, p. 209.]

Editorial Notes.

Validity and effect of contract stipulation limiting time to present claim

against carrier. Ann. Cas. 1914A, 231.

§ 4362d. Reporting of Delayed Trains by Railway or Telegraph Employees.

(Section 1.) All railway corporations operating in the state of Montana upon the arrival of all passenger trains at the first open telegraph or telephone station within the state shall report by telegraph or telephone stations within the state of Montana, at least four hours in advance of said train, to all stations on the route thereof at which said train is scheduled to stop, and to all railway telegraph or telephone stations located on branch lines over which there is a regular train carrying passengers, and

which is scheduled to connect with the train first above referred to, whether the train is on time or late, and if the latter, the number of hours and minutes the said train is behind its advertised schedule.

(Section 2.) No further report will be required relative to such train unless it shall gain time or shall become later than first reported, to the extent of thirty minutes, in which event every such additional thirty minutes delayed, or make up in time, must be reported to stations ahead at which such train is scheduled to stop either by telegraph or by telephone, at least five hours in advance of the arrival time of said train.

(Section 3.) Every operator, agent or person in charge of any telegraph or telephone station shall post a notice in a conspicuous place in the station or waiting-room showing such report on any such train, and when such station is connected by telephone with the central exchange in any town or city, he or she shall promptly notify such central exchange if the train is on time, or if late, the extent of loss of time.

(Section 4.) Any railway or railroad corporation, operator, agent or person in charge of the telegraph or telephone station who shall fail, neglect or refuse to post said notice correctly, or advise such central exchange shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined for each offense not less than twenty-five and not more than two hundred dollars. [Approved March 6, 1909; Laws 1909, c. 105, p. 145.]

Though the statute, requiring the hour of the arrival of passenger trains to be posted at all stations along the lines of railways within the state, was enacted for the protection of railway employees as well as for

the convenience of the public, it has no application to cases arising under the federal employers' liability act. *Nelson v. Northern Pacific Ry. Co.*, 50 Mont. 527, 148 Pac. 338.

§ 4362e. Headlights for Locomotives—Penalty for not Using.

(Section 1.) It shall be the duty of any person, corporation or company operating any railroad or railway in this state, within one year after the passage of this act, to equip all locomotives engines used in the transportation of trains over said railroad or railway with electric headlights of not less than fifteen hundred (1500) candle-power measured without the aid of a reflector, or other headlights of not less than fifteen hundred (1500) candle-power measured without the aid of a reflector. Provided, that this act shall not apply to locomotive engines regularly used in the switching of trains.

(Section 2.) Any person, corporation or company operating any railroad or railway in this state violating the provisions of section 1 of this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred (\$100) dollars nor more than one thousand (\$1000) dollars for each offense. [Approved February 16, 1909; Laws 1909, c. 18, p. 21.]

§ 4362f. Railroads to Construct and Maintain Suitable Crossings.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That at every point in the state of Montana, outside of incorporated cities or towns, where a public road, lawfully established, now crosses or hereafter crosses any line of track owned by any railroad company of any kind, such railroad company shall maintain, in good condition, a crossing built of plank, cement, concrete, brick or other suitable material, which crossing must be so constructed as that the surface of the portion thereof between the rails of such track shall be flush with

the top of the rails of such track, and shall maintain in good condition suitable approaches to such crossings so that such approaches and crossings shall present to the wheels of vehicles crossing the same an even and continuous surface without break, except such as may be necessary on the inner sides of the rails of such track to accommodate the flanges of the wheels of cars or locomotives passing over such track or tracks.

(Section 2.) All railroad companies owning a line or lines of track within the state of Montana shall have until sixty (60) days after the passage and approval of this act in which to place all approaches and crossings at the intersections of public roads with their respective lines of track in the condition required by this act, and in case of any railroads hereafter constructed and in case of public roads hereafter established across any line or lines of track, the owner or owners of such track or tracks shall have sixty (60) days from and after notice of the establishment of such crossings in which to comply with the provisions of section 1 hereof.

(Section 3.) Any railroad company failing to comply with the provisions of this act or failing to repair any crossings which shall have become defective after the same have been erected in compliance with the provisions of this act, within thirty (30) days after receipt of notice of such defective condition, shall pay to the state of Montana a fine of ten dollars (\$10) per day for every day during which it shall fail to comply with the provisions hereof after the expiration of the time for compliance allowed by this act.

(Section 4.) The board of railroad commissioners of the state of Montana is hereby given authority to enforce the provisions of this act, but the county attorneys of the respective counties shall also have authority to institute and prosecute proceedings for the violation of this act as to any crossings within their respective counties. [Approved February 14, 1913; Laws 1913, c. 18, p. 18.]

§ 4362g. Construction and Maintenance of Crossings.

(Section 1.) It is hereby made the duty of all railroads owning, operating or using railway tracks within the state of Montana to make and maintain good and safe crossing at all places where their main lines, spurs and switches intersect or cross public highways, and also to make and maintain such crossings at more than one place in all cities, towns and villages of more than three hundred (300) inhabitants whether same are incorporated or not incorporated towns.

(Section 2.) Whenever a petition for a crossing is signed by at least one-half of the business men residing in any town, city, or village of more than three hundred inhabitants, shall be presented to such railroad, a copy thereof shall be sent to the board of railroad commissioners of the state of Montana and unless said railroad shall construct said crossing within a reasonable time, not exceeding sixty days from date of presentation of said petition it shall be the duty of said board to investigate the facts, and if said crossing is necessary it may enforce the provisions of this act by appropriate proceedings in a summary manner;

And in case crossings are ordered by the board of county commissioners at intersections on highways in the country districts as herein provided for, they, the board of county commissioners, may notify the state board of railroad commissioners of the state of Montana, by a

notice containing a description of the public highway together with a description of the kind of crossing desired and it shall thereupon be the duty of the said state board of railroad commissioners to enforce the provisions of this act by appropriate proceedings in a summary manner.

(Section 3.) Any railroad that fails or neglects to comply with the provisions of this act, on conviction thereof in a court of competent jurisdiction, shall be fined in a sum not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each offense and nothing herein provided shall exempt a railroad from being liable in damages to persons or property injured at such crossings, either before or after notice to construct same.

(Section 4.) All acts and parts of acts contrary to the provisions of this act are hereby repealed.

(Section 5.) This act shall be in force and effect thirty days after its passage and approval. [Approved March 8, 1913; Laws 1913, c. 65, p. 128.]

§ 4362h. Maintenance of Loading Platform by Railroad.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) Every railroad company doing business in this state shall within sixty days after notice from the board of railroad commissioners of the state of Montana erect one or more platforms for the transfer of livestock, grain and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice; such platforms to be erected so as not to endanger life and property. If any railroad company after receiving notice as provided for in this section shall fail, refuse or neglect to erect platforms as required by this and the following section within the required sixty days, the said board of railroad commissioners are authorized and empowered and it is made their duty to notify such railroad company to appear before them at a certain time and place and show cause, if any there is, why such board of railroad commissioners should not issue an order requiring such railroad company to comply with the requirements of this section. The said board of railroad commissioners shall have power, after such hearing, to issue an order upon such railroad company commanding it to erect such platforms, if the said board of railroad commissioners shall upon such examination and hearing deem such platform necessary. Any notice required to be served upon any railroad company to carry out any of the provisions of this section or similar provisions relating to the enlarging of such platforms may be served upon any agent of said company within the state of Montana.

(Section 2.) Each platform shall be not less than twelve feet wide and thirty-two feet long, extending four feet and six inches, or such height as shall be determined by the said board of railroad commissioners above the rails of the track with suitable approaches to and from such platform to admit of the driving of loaded teams thereon.

(Section 3.) The board of railroad commissioners shall have power to order an enlargement of such platforms whenever petitioned to that effect and whenever the capacity of such platforms is in their judgment clearly insufficient for the accommodation of the public.

(Section 4.) Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right of way, for weighing and shipping purposes.

(Section 5.) Every railroad company neglecting or refusing to comply with the requirements of this act shall be deemed guilty of a misdemeanor and be subject to a fine of not less than five hundred dollars for every thirty days such failure shall continue after notice as aforesaid. [Approved February 15, 1913; Laws 1913, c. 26, p. 25.]

§ 4362i. Maintenance of Hotels by Railroad in National Park.

Any railway company, or corporation, organized under the laws of the United States, the state of Montana, or of any other state or territory, and owning or operating a line of railway in the state of Montana may in connection with its railway business construct, acquire, own, operate and maintain, in or on public or national parks, traversed, touched, or reached by its said line of railway in the state of Montana, and at convenient points along its said line, hotels, inns, and restaurants for the accommodation of the employees and patrons of said railway company, or corporation, either in its own name or in the name of another corporation, provided that the stock of such other corporation is owned or controlled by said railway company or corporation. [Approved March 5, 1915; Laws 1915, c. 82, p. 108.]

§ 4362j. Brakes on Street-cars.

(Section 1.) On or before September 1, 1913, all double-track street railway, electric cars or trolley cars, so called, conveying passengers in the state of Montana shall be fitted with at least two independently operating brakes, one of which must be mechanical, such as air-brake, electric short circuiting brake or electric magnetic brake.

(Section 2.) Any corporation or person owning and operating street railway cars, electric or trolley cars, failing to comply with the provisions of this act, shall be liable to a fine of ten (\$10) dollars per car for each day operated without such equipment. [Approved March 13, 1913; Laws 1913, c. 80, p. 343.]

§ 4369.

Members and employees of the railroad commission should be allowed to ride free only when traveling on official business; when on private business, they should pay fare. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 61, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

Cited in *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 55, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

§ 4394.

Members and employees of railroad commission should pay fare when. See note ante, § 4369.

§ 4400.

A telephone company is not a trespasser upon a highway, nor negligent per se, because of its maintaining a guy wire upon

that portion of a public highway not intended for travel. *Howard v. Flathead Independent Tel. Co.*, 49 Mont. 197, 202, 141 Pac. 153.

§ 4408.

Authority for consolidation of corporations. *United Missouri Power Co. v. Yoder*, 41 Mont. 245, 248, 108 Pac. 912.

§ 4409.

Sections 4409-4412 vest power in the holders of two-thirds of the issued stock of any Montana mining corporation to sell the corporate property; in a fair sale, any dissenting stockholder has but the remedy of appraisal, wherein he secures the value of his shares; in a fraudulent sale, he has a choice of remedies, appraisal or avoidance of the sale; but he cannot have both; if he chooses an appraisal he is estopped to sue. *Wall v. Anaconda Copper Min. Co.*, 216 Fed. 242, 244.

FOREIGN CORPORATIONS.

§ 4413.

Authority for consolidation of corporations. *United Missouri Power Co. v. Yoder*, 41 Mont. 245, 248, 108 Pac. 912.

The shipping of beer into this state, by a foreign corporation, and selling the same to a distributing agent, does not constitute a carrying on of business in this state, within the meaning of this section, designating the steps necessary to be taken by a

foreign corporation before it can carry on business here. *Uihlein v. Caplice Com. Co.*, 39 Mont. 327, 336, 102 Pac. 564.

§ 4414.

A foreign corporation may revoke the authority of its statutory agent to receive service, even after a cause of action has accrued against it. *United Missouri River P. Co. v. Wisconsin B. & I. Co.*, 44 Mont. 343, 348, 119 Pac. 796.

§ 4420a. Filing Fees to be Paid by Foreign Corporation.

(Section 1.) Every foreign corporation required by law to file in the office of the Secretary of State a certified copy of its charter or articles of incorporation shall pay to the Secretary of State for the filing thereof as follows:

Upon the proportion of its capital stock then or thereafter to be represented by its property and business in Montana at the rate of fifty (50) cents per thousand dollars for the first one hundred thousand dollars; at the rate of forty (40) cents per thousand dollars for any additional from one hundred thousand dollars to two hundred fifty thousand dollars; at the rate of thirty (30) cents per thousand dollars for any additional from two hundred fifty thousand dollars to five hundred thousand dollars; at the rate of twenty (20) cents per thousand dollars for any additional from five hundred thousand to one million dollars, and at the rate of ten (10) cents per thousand dollars for any additional over one million dollars, provided, however, that no fee for filing shall be less than twenty dollars. [Approved February 27, 1915; Laws 1915, c. 37, p. 53.]

§ 4420b. Annual Reports to be Filed by Foreign Companies.

(Section 2.) Every foreign corporation which shall hereafter file in the office of the Secretary of State a certified copy of its charter or articles of incorporation shall annually and between the first days of January and March of each year file in said office a report verified by the oath of its president, vice-president or secretary, stating the proportion of its capital stock represented in the state of Montana by its property located and business transacted therein during the preceding year. [Approved February 27, 1915; Laws 1915, c. 37, p. 54.]

§ 4420c. Determination of Proportion of Capital Stock Employed in State —Verified Statement.

(Section 3.) In determining the proportion of capital stock employed in this state the same shall be computed by taking the gross business in dollars of the corporation in the state for the preceding year and adding the same to the full value in dollars of the property of the corporation located in the state and by taking the total gross business in dollars of the corporation, both within and without the state for the preceding year, and adding thereto the full value in dollars of the entire property of the corporation both within and without the state and by then dividing the total value in dollars of the business and property in the state by the total value in dollars of all the business and property of the corporation, the quotient thus obtained to be taken as the percentage of the capital stock represented by the business and property within the state. The Secretary of

State may demand as a condition to the filing of such report a statement verified by the president, vice-president or secretary of such foreign corporation, showing in detail the information required for the making of the calculation aforesaid, which statement when so demanded shall be attached to and filed with such report. [Approved February 27, 1915; Laws 1915, c. 37, p. 54.]

§ 4420d. Additional Filing Fees.

(Section 4.) Whenever such report shall show a greater proportion of the capital stock of such foreign corporation represented by its property and business in Montana than that upon which the fee for filing was based, such foreign corporation, at the time of filing such report, shall pay such additional fee as it would have been required to pay for filing if such fee had been calculated on the basis of the proportion of the capital stock represented by its business and property in Montana as shown by such report. [Approved February 27, 1915; Laws 1915, c. 37, p. 55.]

§ 4420e. Penalty for Noncompliance With Law.

(Section 5.) If any foreign corporation shall fail to file such annual report, or to pay such additional fee or shall file a false report, it shall forfeit its right to do business in this state.

(Section 6.) All acts and parts of acts in conflict herewith are hereby repealed. [Approved February 27, 1915; Laws 1915, c. 37, p. 55.]

PROPERTY AND OWNERSHIP.

§ 4424.

Growing timber is realty. *R. M. Cobban Realty Co. v. Donlan* (Mont.), 149 Pac. 484.

Growing timber is realty; as is also an easement for a right of way for cutting and hauling said timber. *R. M. Cobban Realty Co. v. Donlan* (Mont.), 149 Pac. 484.

Mining machinery as a fixture. See post, § 4428.

Execution sale of mining machinery. See note post, § 6828.

A bridge is of necessity affixed to the land and is real property. *State v. Board of Commissioners*, 49 Mont. 517, 523, 143 Pac. 984.

§ 4427.

A bridge is a fixture. *State v. Board of Commissioners*, 49 Mont. 517, 523, 143 Pac. 984.

Growing timber is realty. *R. M. Cobban Realty Co. v. Donlan* (Mont.), 149 Pac. 484.

Editorial Notes.

What are fixtures. 14 Am. Dec. 303; 17 Am. Dec. 686; 24 Am. Dec. 726.

Machinery, when becomes fixtures. 11 Am. Rep. 314; 69 L. R. A. 894.

Heavy machinery screwed on to the floor. 42 Am. Rep. 447.

Store front, erected by tenant as fixture. Ann. Cas. 1914A, 260.

§ 4465.

This section is a limitation only upon the right to lease agricultural land for agricultural purposes; it does not limit the term for which such land may be leased for other purposes. *Lerch v. Missoula Brick & Tile Co.*, 45 Mont. 314, 323, Ann. Cas. 1914A, 346, 123 Pac. 25.

If a fair interpretation of the lease, as written, discloses the fact that the right of the lessee to use the land is strictly limited to other than agricultural purposes, then the lease is not invalid; it is not necessary that the lease contain an express provision, in terms, limiting such use. *Lerch v. Missoula Brick & Tile Co.*, 45 Mont. 314, 323, Ann. Cas. 1914A, 346, 123 Pac. 25.

§ 4466.

This section applies to city and town lots; it has no bearing upon section 4465, ante, and does not throw any light upon it. *Lerch v. Missoula Brick & Tile Co.*, 45 Mont. 314, 325, Ann. Cas. 1914A, 346, 123 Pac. 25.

§ 4472.

Right to interest on deposit made to indemnify sureties. *Leggat v. Palmer*, 39 Mont. 302, 308, 102 Pac. 327.

In an action to recover possession of a mare and colt it is proper to instruct the jury that if the mare has been given to the defendant, verdict should be for the defend-

ant for the possession of the animal "and for any increase or offspring thereof," although the plaintiff was in the actual possession of the dam at the time the colt was foaled and when the defendant took both animals. *Frank v. Symons*, 35 Mont. 56, 62, 88 Pac. 561.

§ 4482.

A deed conveying to the grantee, "his heirs and assigns forever," growing timber and a right of way across the land for the purpose of removing such timber, conveys an estate of inheritance in real property, and the grant was not defeasible on the grantee's failure to cut and remove the timber within a reasonable time. *R. M. Cobban Realty Co. v. Donlan* (Mont.), 149 Pac. 484.

§ 4502.

A notice to a tenant that, at a designated time, a third party will become his landlord is not a compliance with this section, which requires the landlord to give notice to the tenant "to remove from the premises" within a term specified, not less than one month. *Centennial Brewing Co. v. Rouleau*, 49 Mont. 490, 504, 143 Pac. 969.

Where a contract is made for the sale of real property, and the purchaser takes possession but makes default in payment, his mere occupancy of the premises does not convert him into a tenant at will; to create the relation of landlord and tenant, there must be a contract, express or implied; and there cannot be an implied agreement for the occupancy of land, in the face of an express contract that the vendee thereof holds possession under his right to purchase. *Arnold v. Fraser*, 43 Mont. 540, 548, 117 Pac. 1064.

§ 4507.

An easement for a right of way for cutting and hauling timber is realty. *R. M. Cobban Realty Co. v. Donlan* (Mont.), 149 Pac. 484.

Editorial Notes.

Creation and conveyance of easements appurtenant. 136 Am. St. Rep. 680.

Necessity as essential to creation of implied easement of right of way. Ann. Cas. 1913C, 1102.

§ 4518.

The right herein given to the owner of a life estate, to use the land, includes the right of alienation, which is one of the rights inherent in the ownership of the fee. *Kerlee v. Smith*, 46 Mont. 19, 22, 124 Pac. 777.

A probate homestead, set apart for the use of a surviving wife, constitutes a life estate, which may be alienated. *Kerlee v. Smith*, 46 Mont. 19, 22, 124 Pac. 777.

Editorial Notes.

Rights and remedies of tenants of life estate. 14 Am. St. Rep. 630.

Duty of life tenant to remainderman and reversioners. 137 Am. St. Rep. 651.

Duty of life tenant to keep property in repair. 33 L. R. A. (N. S.) 669.

Right of life tenant to compensation for improvements. Ann. Cas. 1913A, 489.

Right of life tenant to remove minerals from soil. Ann. Cas. 1913E, 839.

§ 4521.

The successor of a landlord has no other or greater rights than the latter had. *Centennial Brewing Co. v. Rouleau*, 49 Mont. 490, 504, 143 Pac. 969.

§ 4537.

Trusts. See post, §§ 5364-5412.

An instrument in writing, which neither shows an intention on the part of an alleged trustor to create a trust, nor that the alleged trustee was accepting or acknowledging the existence of a trust, nor indicates the purpose of its creation, nor shows what disposition the alleged trustee is to make of the property, is not sufficient to make the latter a trustee. *Mantle v. White*, 47 Mont. 234, 244, 132 Pac. 22.

Resulting and constructive trusts are created by operation of law; but the latter arises upon the breach of a fiduciary relation by the person sought to be held, and has its basis in fraud, actual or constructive. *Eisenberg v. Goldsmith*, 42 Mont. 563, 577, 113 Pac. 1127.

Evidence insufficient to show a constructive trust. *Eisenberg v. Goldsmith*, 42 Mont. 563, 580, 113 Pac. 1127.

No express trust is created unless it is established by competent evidence, namely, by a written instrument embodying all its terms. *Willoburn Ranch Co. v. Yegen*, 49 Mont. 101, 109, 140 Pac. 231.

Editorial Notes.

Creation of trust in land by parol. 115 Am. St. Rep. 774.

Proof of express trust by written declaration of trustee. Ann. Cas. 1913B, 1023.

Effect of statute of frauds on oral trust fully executed. Ann. Cas. 1913A, 954.

§ 4538.

This section is declaratory of the common law; but one fundamental idea running through the section is that the money paid must be the money of the person who claims the existence and benefit of the trust; it is immaterial whether the payment was made by him personally, or for

him by another; in either instance, the payment must have been made with his money. *Eisenberg v. Goldsmith*, 42 Mont. 563, 574, 113 Pac. 1127.

Evidence insufficient to show a resulting trust. *Eisenberg v. Goldsmith*, 42 Mont. 563, 573, 113 Pac. 1127.

Editorial Notes.

Resulting trusts, definition of and when created. 51 Am. Dec. 751; 2 L. R. A. 146.

§ 4557.

A transaction involving a contract to supply timber, and also involving wages, amounts to an assignment of a chose in action. when. *Parnel v. Davenport*, 36 Mont. 571, 93 Pac. 939.

§ 4558.

Assignment of chose in action. See ante, § 4557.

Things in action, or rights arising out of obligations, are assignable as a general rule, nonassignability being the exception, and the transfer may be made without writing, wherever a writing is not expressly required by statute. *Flinner v. McVay*, 37 Mont. 306, 313, 15 Ann. Cas. 1175, 19 L. R. A. (N. S.) 879, 96 Pac. 340.

§ 4566.

The goodwill of a business is intangible.

Esselstyn v. Holmes, 42 Mont. 507, 516, 114 Pac. 118.

§ 4572.

A person who constructs a bridge so as to connect portions of a public highway separated by a river, is not the owner of the bridge; to all intents and purposes, it belongs to the public. *State v. Board of Commissioners*, 49 Mont. 517, 523, 143 Pac. 984.

§ 4591.

This section and section 4454, ante, are simply declaratory of the common law, under which such intangible rights or interests as those mentioned in these sections cannot be transferred; but it was not the intention of the legislature, in enacting these sections, to make any change in the rule by which courts of equity were theretofore governed in dealing with this class of cases. *Winslow v. Dundom*, 46 Mont. 71, 80, 125 Pac. 136.

If an option contract for the sale of realty is silent as to whether it can be assigned or not, and the intention of the parties is not shown to have been that the right created should be personal to the option holder, the right is assignable, and enforceable in equity, where the agreement involves simply the cash payment of the purchase price mentioned in it. *Winslow v. Dundom*, 46 Mont. 71, 82, 125 Pac. 136.

DEEDS.

§ 4596.

Delivery is a necessity; if a husband and wife give an option to purchase land, and deposit a deed in escrow to be delivered when the option is exercised, but the husband dies before its delivery, his widow is entitled to dower in the land of which her husband died seised, under section 3708, ante, though the deed was after his death by the depositary. *Tyler v. Tyler*, 50 Mont. 65, 144 Pac. 1090.

Editorial Notes.

Delivery of deeds. 16 Am. Dec. 35; 58 Am. Rep. 289; 53 Am. St. Rep. 537; 12 L. R. A. 171.

Delivery of deeds, whether presumed to have been at their dates or at the dates of their acknowledgment. 86 Am. Dec. 63.

Delivery of deeds to a third person for the use of the grantee. 40 Am. Rep. 217; 54 L. R. A. 865; 9 L. R. A. (N. S.) 224; 38 L. R. A. (N. S.) 941.

Presumption of delivery and acceptance of deed from parent to infant child. Ann. Cas. 1912A, 230.

Delivery of deed by deposit by grantor for registration. 7 Ann. Cas. 226.

§ 4599.

The delivery of a deed in escrow, by the depositary, after the death of the grantor, does not relate to the date of its execution; the right of dower cannot thus be defeated. *Tyler v. Tyler*, 50 Mont. 65, 144 Pac. 1090.

Editorial Notes.

Deeds delivered in escrow. 53 Am. St. Rep. 555.

Delivery of deed in escrow as change of title or interest. 38 L. R. A. (N. S.) 142.

§ 4610.

Where deed conveyed timber together with an easement of way across the land to remove it, in fee simple, the conveyance of the easement expressed without limitation as to time did not show an intent that the grantee's right in the timber should be lost by reason of the failure to remove it within a reasonable time, since the incidents of the grant take their character from the interest to which they are attached. *R. M. Cobban Realty Co. v. Donlan* (Mont.), 149 Pac. 484.

§ 4619.

One who executes a deed to a portion of a lode claim is presumed to intend to pass

the best title he has in the ground. *Collins v. McKay*, 36 Mont. 123, 132, 122 Am. St. Rep. 334, 92 Pac. 295.

A deed conveying to the grantee, "his heirs and assigns forever," growing timber and a right of way across the land for the purpose of removing such timber, conveys an estate of inheritance in real property, and the grant was not defeasible on the grantee's failure to cut and remove the timber within a reasonable time. *R. M. Cobban Realty Co. v. Donlan (Mont.)*, 149 Pac. 484.

§ 4620.

A deed purporting to convey a portion of a lode claim, naming it, located for the purpose of protecting a placer claim from possible adverse claimants, conveys such

portion of the subsequently patented placer claim, lying within the exterior boundaries of the lode claim, as can be identified; and it is immaterial whether the lode location is a valid one as against others. *Collins v. McKay*, 36 Mont. 123, 131, 122 Am. St. Rep. 334, 92 Pac. 295.

Editorial Notes.

After-acquired title as passing by quitclaim deed. *Ann. Cas.* 1913C, 368.

§ 4621.

A deed is a declaration that the grantee is vested with a clear title, free from any lawful claim, not only by the grantor but by any other person, except as provided in this section. *Dubbels v. Thompson*, 49 Mont. 550, 555, 143 Pac. 986.

GIFTS.

§ 4635.

To constitute a gift *inter vivos*, the donor must voluntarily deliver the subject of the gift to the donee with the present intention to vest the legal title in the donee, who must accept; the essential elements are the delivery, the accompanying intent, and acceptance by the donee; such a gift is made without condition and becomes at once irrevocable. *O'Neil v. O'Neil*, 43 Mont. 505, 511, *Ann. Cas.* 1912C, 268, 117 Pac. 889.

Editorial Notes.

Law governing validity of gift *causa mortis*. *Ann. Cas.* 1912C, 272.

§ 4638.

A gift *causa mortis* must have been made in contemplation, fear, or peril of death; the donor must have died of the illness or peril which he then feared or contemplated; and the delivery must have been made with the intent that title should vest only in case of death. *O'Neil v. O'Neil*, 43 Mont. 505, 511, *Ann. Cas.* 1912C, 268, 117 Pac. 889.

ACKNOWLEDGMENTS.

§ 4655. Persons Before Whom Acknowledgment may be Taken.

The proof of acknowledgment of an instrument may be made in this state within the city, county or district for which the officer was elected or appointed, before either:

1. A clerk of a court of record; or,
2. A county clerk; or,
3. A notary public; or,
4. A justice of the peace; or,
5. A United States commissioner.

[Amendment approved February 8, 1913; Laws 1913, p. 9.]

§ 4659. Officer Taking Acknowledgment must Know Person—Corporations.

The acknowledgment of an instrument must not be taken unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in, and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or vice-president, or secretary or assistant secretary of such corporation. [Amendment approved January 31, 1913; Laws 1913, p. 2.]

§ 4664. Acknowledged by Corporation—Form of Certificate.

The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

State of..... }
County of..... } ss.

On this day of in the year before me (here insert name and quality of the officer), personally appeared known to me (or proved to me on oath of) to be the president (or vice-president) or secretary (or assistant secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same. [Amendment approved January 31, 1913; Laws 1913, p. 2.]

§ 4681. Certified Copies as Evidence—Record of Defective Instruments.

Any instrument affecting real property, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, and recorded, shall be valid, and have the same force and effect, as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded. [Amendment approved January 31, 1913; Laws 1913, p. 3.]

HOMESTEADS.

§ 4700.

The alienation of a probate homestead, by a surviving wife, is not an abandonment thereof. *Kerlee v. Smith*, 46 Mont. 19, 23, 124 Pac. 777.

Editorial Notes.

Abandonment of homestead, what constitutes. 60 Am. Dec. 607; 36 Am. Rep. 728; 102 Am. St. Rep. 388.

§ 4718.

The expression "head of the family," as used in the statutes relating to homestead, includes an abandoned wife. *Mennell v. Wells* (Mont.), 149 Pac. 954.

Editorial Notes.

Head of family, who is and what constitutes a family. 61 Am. Dec. 586; 70 Am. St. Rep. 107.
What constitutes a family. 4 L. R. A. (N. S.) 366.

§ 4719.

It may be that the grant of a homestead, selected according to this and the next three succeeding sections, constitutes an abandonment of it; but the alienation of a probate homestead, by the widow, is not an abandonment. *Kerlee v. Smith*, 46 Mont. 19, 23, 124 Pac. 777.

When the husband fails to select a homestead the wife may select one. *Mennell v. Wells* (Mont.), 149 Pac. 954.

WILLS.

§ 4723.

This section cannot be extended, by construction, to include anyone not mentioned in it. In *re Beck's Estate*, 44 Mont. 561, 580, 121 Pac. 784.

§ 4725.

See statutes on gifts to educational and charitable institutions. Post, p. 997.

This section is exclusive in its character; hence, the state orphans' home, not being

a corporation, either public or private, of the nature designated therein as capable of taking under testamentary disposition, may not do so. In re Beck's Estate, 44 Mont. 561, 572, 121 Pac. 784.

Under this section, only natural persons, and corporations formed for scientific, literary, or solely educational purposes may take through testamentary disposition; other corporations, unless expressly authorized by statute to do so, cannot so take. In re Beck's Estate, 44 Mont. 561, 572, 580, 121 Pac. 784.

Where the estate has not given its consent to becoming a beneficiary under a will, it is incapable of taking as a legatee. In re Beck's Estate, 44 Mont. 561, 576, 584, 121 Pac. 784.

The purpose of legislation is to prescribe rules to regulate the conduct, and protect and control the rights, of the citizen; and general words therein, creating a right and providing a remedy for its enforcement, do not include the state. In re Beck's Estate, 44 Mont. 561, 574, 121 Pac. 784.

Powers of various state institutions to accept gifts, devises, or bequests. In re Beck's Estate, 44 Mont. 561, 581, 121 Pac. 784.

Editorial Notes.

Power of county to take real estate by devise. Ann. Cas. 1914A, 1192.

Right of benefit society to take under will. Ann. Cas. 1914A, 596.

§ 4726.

A written will is not executed in compliance with this section, where one of the subscribing witnesses does not hear the will read; is not requested by anyone to sign as a witness; does not see the signature of the testator; and is not informed, until nearly two years later, of the character of the paper. In re Noyes' Estate, 40 Mont. 178, 190, 105 Pac. 1013.

A will is not executed in conformity with law, where the subscribing witnesses are not informed of the nature of the instrument and it is folded in such a way that they cannot see what it is. In re Williams' Will, 50 Mont. 142, 145 Pac. 957.

Where the legal adviser of a testatrix requests, with her intelligent acquiescence, the witnesses to sign her will, the requirement that witnesses must sign at the testator's request is sufficiently complied with. Estate of Miller, 37 Mont. 545, 97 Pac. 935.

It is not essential that a testator, in executing his will, should expressly declare the instrument to be his will. Estate of Miller, 37 Mont. 545, 97 Pac. 935.

Where a woman is too weak to sign her will, she may be assisted by a bystander, who guides her hand. Estate of Miller, 37 Mont. 545, 97 Pac. 935.

Editorial Notes.

Signature of testator "at end" of will. Ann. Cas. 1913C, 845.

Form of will. 41 L. R. A. (N. S.) 39.

§ 4727.

This section is mandatory; all its requirements must be pursued to give an instrument validity; hence, where the date in a writing is partly printed, such writing is invalid as a holographic will, though otherwise it meets with all the requirements of this section. In re Noyes' Estate, 40 Mont. 190, 195, 20 Ann. Cas. 366, 26 L. R. A. (N. S.) 1145, 105 Pac. 1017.

Editorial Notes.

Violation of requirement that holographic will shall be written by the testator. 26 L. R. A. (N. S.) 1145.

Sufficiency of attestation of holographic will. Ann. Cas. 1913B, 1305.

§ 4730.

The question of the competency of a beneficiary under a will as a witness thereto has reference in point of time to the date of the attestation. Estate of Klein, 35 Mont. 185, 209, 88 Pac. 798.

§ 4732.

Construed where the competency of a beneficiary under a will, to be a subscribing witness, was considered, the court holding that such competency has reference in point of time to the date of attestation. Estate of Klein, 35 Mont. 185, 209, 88 Pac. 798.

This section does not apply to a witness to the due execution of a will if he is not a subscribing witness. In re Williams' Will, 50 Mont. 142, 145 Pac. 957.

If a witness to a will, though not a subscribing witness, is named therein as executor, the fees to accrue to him as executor do constitute such an interest as will disqualify him, under this section, from testifying concerning the execution of the will; his compensation is not a "legacy," or a "devise," or a "beneficial devise" within the meaning of this section. In re Williams' Will, 50 Mont. 142, 145 Pac. 957.

§ 4741.

Different instruments as a will. See post, § 4766.

Two wills by the same testator, in the execution of both of which the statutory requirements have been met, must be construed together, unless the former has been revoked by the testator as prescribed by the statute. In re Noyes' Estate, 40 Mont. 238, 106 Pac. 231.

Editorial Notes.

Revocation of wills. 28 Am. St. Rep. 348.

Partial revocation of will. Ann. Cas. 1913D, 313.

Revocation of will by subsequent defectively executed will. Ann. Cas. 1912D, 235.

Revocation of will in manner other than that provided by statute. Ann. Cas. 1913D, 309.

Revocation of will by inconsistent provisions of subsequent will. Ann. Cas. 1914A, 123.

§ 4749.

If an owner has given an option to purchase, and deposits a deed in escrow to be delivered upon condition of payment, but dies before the exercise of the option, the title is still in him and must necessarily descend to his heirs, subject to such right as the holder of the option contract has under which the deposit was made. Tyler v. Tyler, 50 Mont. 65, 144 Pac. 1090.

§ 4755.

Where a testator has omitted in his will to provide for any of his children, evidence dehors the will may be received under this section to ascertain whether the omission was intentional, however strictly the legislature may have limited the inquiry, in other cases, to the will itself as the exclusive source of information respecting the subjects treated, as in sections 4745, 4746, 4747, ante, and 4757, 4759, 4760, 4764, and 4786, post. In re Estate of Peterson, 49 Mont. 96, 98, 140 Pac. 237.

§ 4762.

Purpose of sections 4761 and 4762; and comments upon both sections. In re Beck's Estate, 44 Mont. 561, 577, 121 Pac. 784.

§ 4766.

Construing two wills together. See note ante, § 4741.

A letter not intended to be a will is not an holographic will; and instrument, however, not of a testamentary character, may be construed with one having that character for the purpose of determining whether the writings, taken together, constitute a will; if the former, by appropriate reference, is clearly referred to and made a part of the latter, it is a part of the will; otherwise, it is not. In re Noyes' Estate, 40 Mont. 231, 106 Pac. 231.

§ 4770.

Applied where a testator had made a bequest of three thousand dollars, "less a note of two thousand dollars," held by him against the beneficiary; in ordinary business transactions, the quoted words would refer to the debt as a whole, and not to the sum mentioned as principal only. In re Beck's Estate, 44 Mont. 561, 578, 121 Pac. 784.

What individuals are not "employees" within the meaning of a will. Estate of Klein, 35 Mont. 185, 204, 88 Pac. 798.

The word "firm" in a will held to have been used by the testator in its ordinary rather than in its legal sense. Estate of Klein, 35 Mont. 185, 204, 88 Pac. 798.

Editorial Notes.

Construction of words repeated in will. Ann. Cas. 1914B, 64.

§ 4774.

The word "firm" in a will held not to have been used in its technical legal sense. Estate of Klein, 35 Mont. 185, 204, 88 Pac. 798.

§ 4786.

What employees are included as beneficiaries under a will. Estate of Klein, 35 Mont. 185, 204, 88 Pac. 798.

SUCCESSION.

§ 4819.

Applied in the case of heirs in the German empire. In re Colbert's Estate, 44 Mont. 259, 266, 119 Pac. 791.

An administrator is not, by virtue of his office, a co-owner with the cotenants of his decedent in a mining claim. O'Hanlon v. Ruby Gulch Min. Co., 48 Mont. 65, 74, 135 Pac. 65.

Editorial Notes.

Cotenancy in mines. 91 Am. St. Rep. 851.

§ 4820.

The fourth and second subdivisions of this section do not conflict; collating the two subdivisions, there is a plain legisla-

tive declaration that, to enable nieces or nephews to share an estate with a surviving wife, there must be a surviving brother or sister and neither father nor mother. Brundy v. Canby, 50 Mont. 454; 148 Pac. 315.

Editorial Notes.

Degrees of consanguinity and affinity, how computed for the purposes of. 56 Am. Dec. 293.

Half-blood, inheritance by. 61 Am. Dec. 665.

Who entitled to succeed to estates of intestates. 12 Am. St. Rep. 82.

Who are heirs. 15 L. R. A. 300.

When relationship by affinity terminates. Ann. Cas. 1912B, 1028.

§ 4835.

The last clause of this section is a statute of limitations, and not repugnant to that provision of the Constitution, article III, section 25, which places aliens and denizens on the same footing as citizens in granting the right to inherit. In *re Colbert's Estate*, 44 Mont. 259, 267, 119 Pac. 791.

In granting the right to inherit, the Constitution goes no further than to put aliens and denizens on the same footing as citizens. It does not place any limitation upon the power of the legislature to impose upon such right the condition as to time, prescribed in this section, or any other condition that it may deem necessary to prescribe in order that estates may be

properly administered and distributed. In *re Colbert's Estate*, 44 Mont. 259, 267, 119 Pac. 791.

In enacting statutes of limitation, the legislature may lawfully discriminate, even between citizens of different states; hence, there is nothing unconstitutional in discriminating between foreigners, who have never been residents of any of the states, and citizens. In *re Colbert's Estate*, 44 Mont. 259, 268, 119 Pac. 791.

Editorial Notes.

Right of aliens to receive or transmit inheritance. 12 Am. St. Rep. 93.

Right of alien with respect to inheritance of real property as affected by treaty with foreign country. Ann. Cas. 1912A, 1100.

WATERS.

§ 4840.

Sections 4840-4891, now constitute the law of appropriation of water so far as controlled by legislation; as respects the method to be pursued by the intending appropriator proceeding under the statute, there has not been any substantial change made since the original act of 1885 went into effect. *Bailey v. Tintinger*, 45 Mont. 154, 167, 122 Pac. 575.

This section and the following ones of this title, regulating the acquisition of the use of water by appropriation, do not and cannot authorize a person to go upon the private property of another for the purpose of making an appropriation, except by condemnation proceedings. *Prentice v. McKay*, 38 Mont. 114, 117, 98 Pac. 1081.

This section and the following ones of this title, regulating the acquisition of the use of water by appropriation, apply only to appropriations made on the public lands of the United States, or of the state, and to such as are made by individuals, who have riparian rights, either as owners of riparian lands or through grants from such owners. *Prentice v. McKay*, 38 Mont. 114, 117, 98 Pac. 1081.

One who proceeds under the statute relative to the acquisition of water rights, instead of under the rules and customs of the early settlers, has a completed appropriation when the work on his ditch or canal is finished and before the water is actually applied to its intended use. *Bailey v. Tintinger*, 45 Mont. 154, 179, 122 Pac. 575.

A public service corporation, authorized to install an irrigation system and to sell or rent water to reclaim arid lands, has a completed appropriation when its distributing system is finished, and when the corporation is ready to deliver water to users upon demand, and offers to do so. *Bailey v. Tintinger*, 45 Mont. 154, 179, 122 Pac. 575.

The right of a public service corporation to furnish water to irrigate arid lands may

be lost by abandonment or nonuser for an unreasonable time. *Bailey v. Tintinger*, 45 Mont. 154, 178, 122 Pac. 575.

§ 4841.

While the appropriation must be for some useful or beneficial purpose, the use to which the water is to be applied need not be immediate, but may be prospective or contemplated. *Bailey v. Tintinger*, 45 Mont. 154, 175, 122 Pac. 575.

An appropriator of water need not be either an owner or in possession of land, to make a valid appropriation for irrigation purposes. *Bailey v. Tintinger*, 45 Mont. 154, 175, 122 Pac. 575.

Respecting the use of water for purposes of irrigation, the ultimate question in every case is, how much will supply the actual needs of the prior claimant under existing conditions. *Conrow v. Huffine*, 48 Mont. 437, 445, 138 Pac. 1094.

Editorial Notes.

Right to appropriate water for irrigation purposes. 98 Am. Dec. 542.

What constitutes an appropriation of water. 60 Am. St. Rep. 799.

§ 4842.

The first appropriator of water may change the point of diversion, or may use it for other purposes, provided the change does not injuriously affect the rights of subsequent appropriators. *Featherman v. Hennessy*, 43 Mont. 310, 316, 115 Pac. 983.

The successors of the appropriator of water appropriated for placer mining purposes cannot so change its use as to deprive lower appropriators of their rights, already acquired, in the use of it for irrigating purposes. *Head v. Hale*, 38 Mont. 302, 308, 100 Pac. 222.

One has no more right to change the point of diversion than he has to change the place

of the use, or the character of the use, to the prejudice of other appropriators; but it does not follow that any such change is to be taken, in limine, as prejudicial; on the contrary, the burden is on the party claiming to be prejudiced by such change, to allege and prove the facts. *Lokowich v. City of Helena*, 46 Mont. 575, 577, 129 Pac. 1063.

The burden is upon the party who claims to have been adversely affected by a change of the place of diversion of water, or by a change in its use, to show that he has been injured thereby. *Hansen v. Larsen*, 44 Mont. 350, 353, 120 Pac. 229.

§ 4844.

When the first appropriator of water has finished his use thereof, he must return the water to the stream, to be used by subsequent appropriators. *Featherman v. Hennesy*, 43 Mont. 310, 316, 115 Pac. 983.

§ 4846.

The United States, in making appropriations of water from the non-navigable streams of the state, must proceed as a corporation or individual. *Bailey v. Tintinger*, 45 Mont. 154, 177, 122 Pac. 575.

§ 4847.

To secure a completed appropriation of water under the statute, notice must be posted and filed as herein required; and, under section 4848, post, work must be commenced within forty days after the notice is posted, and it must be prosecuted with reasonable diligence and be actually completed. *Bailey v. Tintinger*, 45 Mont. 154, 173, 122 Pac. 575.

Since 1885, two distinct methods of appropriating water are prescribed; one, by complying with the rules and customs of the early settlers; the other, by complying with the terms of the statute. *Bailey v. Tintinger*, 45 Mont. 154, 172, 122 Pac. 575.

§ 4849.

An appropriator of water cannot invoke the doctrine of relation until there has been a completed appropriation. *Bailey v. Tintinger*, 45 Mont. 154, 171, 122 Pac. 575.

§ 4852.

The provisions of this section are permissive, not mandatory. *Sloan v. Byers*, 37 Mont. 503, 510, 97 Pac. 855.

§ 4881. Appointment of Water Commissioner.

(Section 1.) Whenever the rights of persons to use the waters of any stream, watercourse, spring, lake, reservoir, or other source of supply, have been determined by a decree, or decrees, of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least ten per cent of the water rights affected by the decree, or decrees, in the exercise of his discretion to appoint one or more commissioners who shall

It was not the intention of the legislature in enacting this section to compel defendants to litigate their respective titles as between themselves, to the end that future litigation should be avoided. *Sloan v. Byers*, 37 Mont. 503, 513, 97 Pac. 855.

The provision of this section, that the court may, "in one judgment, settle the relative priorities and rights of all the parties to such action," is permissive only; hence, while the rights of all the parties, whether arising out of joint or independent appropriations, may be adjudicated in a single decree, yet, under the rule declared in section 7917, post, no presumption attaches that any such adjudication has been had, unless that fact appears upon the face of the decree itself, or, in any event, from the judgment-roll. *Bennett v. Quinlan*, 47 Mont. 247, 253, 131 Pac. 1067.

This section contemplates equitable actions only, in which relative priorities and conflicting rights of all parties may be settled, and where the damages claimed are a mere incident. *Howell v. Bent*, 48 Mont. 268, 273, 137 Pac. 49.

The right to the use of water may be acquired by prescription as against an individual, and the lapse of time necessary to require such right is the period limited by the statute of limitations for entry upon land. *State v. Quantie*, 37 Mont. 32, 51, 94 Pac. 491.

The district court may settle the relative priorities and rights of all the parties to a water right suit in one judgment only when pleadings have been framed so as to justify such settlement. *Sloan v. Byers*, 37 Mont. 503, 513, 97 Pac. 855.

When two or more parties act, each for himself, in producing a result injurious to the plaintiff, as where they divert water to the injury of his crops, they cannot be held jointly liable for the acts of each other; nor, in the absence of statutory authorization, can they be sued in one action for the entire damage, either with or without an apportionment to each of his share of the damage; this section does not authorize such a proceeding. *Howell v. Bent*, 48 Mont. 268, 272, 137 Pac. 49.

§ 4860.

History of section. *Bailey v. Tintinger*, 45 Mont. 154, 175, 122 Pac. 575.

have authority to admeasure and distribute to the parties bound by the decree, or decrees, the waters to which they are entitled according to their rights as fixed by such decree, or decrees. At the time of the appointment of any water commissioner or water commissioners his or their fees and compensation must be fixed in the order. [Amendment approved February 23, 1911; Laws 1911, p. 72.]

§ 4882. Appointment of Commissioners to Admeasure and Distribute Waters.

(Section 2.) When the judge of the district court shall appoint two or more commissioners to admeasure and distribute the waters mentioned in section 1 of this act he may appoint one of them chief commissioner and empower him to exercise direction and control over the other or others in the discharge of their duties. The judge may depose the one appointed chief commissioner from that position and appoint another in his stead whenever it appears to the judge that better service may be given the water-users by making the change. [Amendment approved February 23, 1911; Laws 1911, p. 72.]

§ 4883. Oath of Commissioners.

(Section 3.) Each water commissioner so appointed by the court, shall subscribe and file with the clerk of the district court, an oath of office, before commencing the discharge of his duties as commissioner. [Amendment approved February 23, 1911; Laws 1911, p. 72.]

§ 4884. Term of Office of Commissioners.

(Section 4.) Every water commissioner, so appointed, shall hold his office for such time during the irrigating season of each year as may be designated by the judge in the order making such appointment; provided, that the judge may in his discretion, at any time, change the time for the closing of the commissioner's service. [Amendment approved February 23, 1911; Laws 1911, p. 73.]

§ 4885. Power of Commissioners in Admeasuring Water—Expenses.

(Section 5.) Every water commissioner appointed by the judge of the district court for that purpose shall have the authority to admeasure and distribute to the parties interested under such decree or decrees the water to which those who are parties to the decree or decrees, or privy thereto, are entitled according to their priority as established by the decree or decrees. The water commissioner, in case the parties fail or refuse to do so, may incur necessary expenses in the making of headgates or dams for the distribution of the waters, and such expense shall be assessed against and paid by the party or parties for whom such services in the repair of the ditch or ditches, and the making of any dams or headgates, were necessary. [Amendment approved February 23, 1911; Laws 1911, p. 73.]

§ 4886. Maintenance and Repair of Ditches or Systems.

(Section 6.) Upon written request of the owners of at least fifty-one per cent of the water rights in any adjudicated ditch or single water system the judge of the district court may empower the commissioner to maintain and keep in reasonable repair such water ditch or water system at the expense of the owners thereof, and for such purposes the commissioner shall have authority to enter and work upon any ditch, canal, aqueduct, or other

source of conveying the waters affected by the decree and the right of way thereof, and to visit, inspect and adjust all headgates or other means of distribution of such waters. [Amendment approved February 23, 1911; Laws 1911, p. 73.]

§ 4887. Failure to Perform Duty a Contempt of Court.

(Section 7.) If any commissioner shall fail to perform any of the duties imposed upon him by the order of the judge of the district court he shall be deemed guilty of a contempt of said court. [Amendment approved February 23, 1911; Laws 1911, p. 73.]

§ 4888. Further Authority of Commissioners—Arrests.

(Section 8.) For the purposes of carrying out the provisions of this act each commissioner appointed by the court shall have authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree, and to visit, inspect, and adjust all headgates, or other means of distributing the waters, and shall have the same powers as a sheriff or constable to arrest any and all persons interfering with the distribution made by him, to be dealt with according to law. [Amendment approved February 23, 1911; Laws 1911, p. 73.]

§ 4889. Record of Daily Distribution of Water.

(Section 9.) Each water commissioner must keep a daily record of the amount of water distributed to each water-user, and must file a summary of such record with the clerk of the court monthly, during his term of service, showing in detail the total amount of water distributed to each water-user during such month daily, and the amount of cost therefor based upon the water commissioner's or commissioners' salary per day and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the judge they may file a joint summary of their record with the clerk of the court, or the chief commissioner, if one has been appointed by the judge, may file a summary in behalf of all of them. [Amendment approved February 23, 1911; Laws 1911, p. 74.]

§ 4889a. Charges and Expenses.

(Section 10.) The judge may also allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of his duties, in the employment of extra labor for the repair of dams, headgates, ditches, or flumes, when immediate action is necessary to preserve the rights of the parties entitled to the waters of such stream, or when the judge has, in the order appointing the commissioner, required the commissioner to repair ditches and keep in repair necessary headgates, ditches or flumes. The water commissioner shall report all such expenses and the cost thereof shall be taxed against the party or parties for whose benefit the same were incurred. [Amendment approved February 23, 1911; Laws 1911, p. 74.]

§ 4889b. Telephone Expenses.

(Section 11.) The judge may also allow as a charge reasonable expenses incurred by a water commissioner in telephoning to the judge for instructions in cases of emergency; and when there are two or more commissioners acting under the judge's order reasonable expenses incurred in communicating with each by telephone, or with the judge of the district

court, in order to carry on the distribution of the waters harmoniously and in accordance with the decree shall be deemed a necessary expense; these expenses shall be reported by the water commissioner or commissioners at the close of the season and shall be taxed against all the water-users affected by the decree or decrees ratably in proportion to the whole amount of water distributed to them during the season. [Amendment approved February 23, 1911; Laws 1911, p. 74.]

§ 4889c. Apportionment of Fees and Expenses.

(Section 12.) Upon the filing of the monthly report by the water commissioner or water commissioners the judge of the court shall make an order apportioning the total amount of the fees and compensation allowed to such commissioner or commissioners for such month, as well as the expenses necessarily incurred by him or them, and charge the same proportionately to the persons using water during such month according to the number of inches of water used by such persons each day, except as herein otherwise provided. [Amendment approved February 23, 1911; Laws 1911, p. 75.]

§ 4889d. Objection to Expenses—Retaxation and Adjustment.

(Section 13.) As soon as the judge of the court shall file with the clerk of the court his order fixing the fees, compensation and expenses of the water commissioner or commissioners, the clerk of the court forthwith shall notify each person mentioned in such report by mail of the amount he is made liable for by the judge's order and that objections to such order may be made by any person interested therein within twenty days after the filing of the order, and unless objections thereto are filed the order will be deemed final. At any time during said twenty days any person objecting to such report may make a motion to retax and adjust the same, and the judge shall hear and determine the motion and make orders in reference thereto as in the retaxation of costs in other cases. The affidavit of the clerk that he has mailed a notice to each person mentioned in the report at such person's last known postoffice address in the usual manner shall be deemed prima facie evidence that the person received the notice provided for in this section. [Amendment approved February 23, 1911; Laws 1911, p. 75.]

§ 4889e. Effect of Order Fixing Fees and Compensation—Lessees—Issuance of Execution.

(Section 14.) After the order of the court fixing the fees and compensation and expenses of the water commissioner or commissioners is final it shall have all the force and effect of a judgment as against the person to whom the water was admeasured and for whose benefit it was used. When the water used has been admeasured to a lessee, or tenant in any degree, of the owner of the land upon which the water was used, the order shall have the effect of a judgment against the property of the lessee or tenant only. Execution may issue upon the order as upon a judgment by direction of the court or judge upon the application of any person interested therein. [Amendment approved February 23, 1911; Laws 1911, p. 75.]

§ 4889f. Complaint by Dissatisfied User—Procedure.

(Section 15.) Any person owning or using any of the waters of such stream, who is dissatisfied with the method of distribution of the waters of

such stream by such water commissioner or water commissioners, and who claims to be entitled to more water than he is receiving, or is entitled to a right prior to that allowed him by such commissioner or water commissioners, may file his written complaint, duly verified, setting forth the facts of such claim. Thereupon the judge shall fix a time for the hearing of such petition and shall direct that notice be given to the parties interested in such hearing, the judge may deem necessary. At the time fixed for such hearing, the judge must hear and examine the complainant and such other parties as may appear to support or resist such claim, and also examine such water commissioner or water commissioners and witnesses as to the charges contained in said complaint. Upon the determination of the hearing, the judge shall make such findings and order as he may deem just and proper in the premises. If it shall appear to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, then the judge shall give the proper instructions for such distribution. The judge may remove such water commissioner or water commissioners and appoint some other person or persons in his or their stead, if he deems that the interests of the parties in the waters mentioned in such decree will be best subserved thereby, and if it shall appear to the judge that the said water commissioner or water commissioners have willfully failed to perform their duties, they may be proceeded against for contempt of court, as provided in contempt cases. The judge shall make such order as to the payment of costs of such hearing as may appear to him to be just and proper. [Amendment approved February 23, 1911; Laws 1911, p. 76.]

§ 4889g. Repealing Clause.

(Section 16.) Sections 4881, 4882, 4883, 4884, 4885, 4886, 4887, 4888, and 4889 of the Revised Codes of 1907 are hereby repealed. [Amendment approved February 23, 1911; Laws 1911, p. 77.]

CONTRACTS AND OBLIGATIONS.

§ 4892.

If a person receives money, which he, in equity and good conscience, ought to turn over to him from whom he received it, the law implies a promise on his part to refund the money; the "obligation" or legal duty, thus created or implied by law, is termed a "quasi contract," which is distinguishable from the contract defined in sections 4965 and 4966, post. *Schaeffer v. Miller*, 41 Mont. 417, 423, 137 Am. St. Rep. 746, 109 Pac. 970.

§ 4895.

Whether a partner is severally liable for services rendered the firm. See *Carlson v. Barker*, 36 Mont. 486, 492, 93 Pac. 646.

§ 4897.

Where the relation of parties is merely that of joint or joint and several obligors, an action at law can be maintained by one of them against any one of the others, upon the theory that each of them, upon

assuming the relation, impliedly agreed to contribute to every other such sum as the other should be compelled to pay in his behalf. *Croft v. Bain*, 49 Mont. 484, 488, 143 Pac. 960.

Editorial Notes.

Contribution among joint principals, one being insolvent. 20 Am. Dec. 559.

Contribution between persons liable for negligence. 16 Am. St. Rep. 254.

Contribution, actions for not founded on an express promise. 98 Am. St. Rep. 31.

Contribution between tort-feasors. Ann. Cas. 1913B, 938; 40 L. R. A. (N. S.) 1147.

Right of promoter to bring action at law against fellow-promoters for contribution. Ann. Cas. 1913E, 1167.

§ 4901.

One who has agreed to convey land when he has acquired title to it cannot terminate

the contract without tendering a conveyance, or at least accompanying the demand for payment with an offer to convey; the obligation to convey being concurrent with the obligation to pay, the right to terminate the contract does not arise until the vendor has acquired title, and tendered or offered a conveyance. *Milwaukee Land Co. v. Ruesink*, 50 Mont. 489, 148 Pac. 396.

§ 4903.

Where a delivery and payment, in the case of a sale, are to be concurrent, at a place designated, the purchaser cannot recover for the seller's failure to deliver without showing an offer and ability to receive and to pay for the article purchased, at the place indicated. *Jendresen v. Hansen*, 50 Mont. 216, 146 Pac. 473.

§ 4907.

Where one offers to purchase land, part of the price specified to be paid in cash and the balance in two or three years, and the vendor agrees to these terms, the vendee has the option to elect whether to make the deferred payment in two or in three years. *Long v. Needham*, 37 Mont. 408, 96 Pac. 731.

§ 4923.

If a note sued upon is joint and several, payment by one of the makers extinguishes the liability of all. *First Nat. Bank v. Silver*, 45 Mont. 231, 235, 122 Pac. 584.

§ 4926.

If one party to an agreement contracts to plow land, and to sow it in wheat, in a certain way, but fails in fully performing his agreement, the other party is not obliged to pay for the work done; he must accept such benefits as inure from the part performance whether he wills to do so or not. *Waite v. C. E. Shoemaker & Co.*, 50 Mont. 264, 146 Pac. 736.

Remedy of plaintiff for partial performance of contract. *McFarland v. Welch*, 48 Mont. 196, 199, 136 Pac. 394.

§ 4936.

Where an oral contract was made to sell real property, and suit was brought by the vendee, for specific performance, the court could not say that time was of the essence of the agreement. *Stevens v. Trafton*, 36 Mont. 520, 529, 93 Pac. 810.

Where sheep sold are to be delivered on a day stated, but time is not of the essence of the contract, and the sheep are not delivered on that day, the buyer cannot rescind without giving the seller an opportunity to tender performance with compensation for delay; but the seller, to protect his rights, must, within a reason-

able time, tender performance, coupled with an offer to compensate for delay. *Curtis & Freeman v. Parham*, 49 Mont. 140, 145, 140 Pac. 511.

§ 4959.

Where a man buys an automobile, giving a chattel mortgage to secure unpaid purchase money, but afterward a new agreement is made, whereby the purchaser is to run the machine for hire, the seller paying expenses, and the buyer to turn over to the seller all moneys received until the balance due on the machine is paid, such new agreement does not effect a novation; it does not extinguish the debt. *Kinsman v. Stanhope*, 50 Mont. 41, 144 Pac. 1083.

Editorial Notes.

Novation, action by a third person on a promise made for his benefit. 39 Am. St. Rep. 531.

Whether release of original debtor by novation of contract may be established by implication. *Ann. Cas.* 1912D, 508.

§ 4960.

Evidence held insufficient to show a contract by novation. See *McAllister v. McDonald*, 40 Mont. 375, 388, 106 Pac. 882.

§ 4970.

To enable a third person to take advantage of a contract made for his benefit there must have been a consideration passing from him; or, the relationship between him and the contracting parties must have been such as that a consideration may be deemed to have passed from him. *Tatem v. Eganol Min. Co.*, 45 Mont. 367, 373, 123 Pac. 28.

§ 4975.

Threatening to do that which a person has a right to do is not duress. *Ott v. Pace*, 43 Mont. 82, 91, 115 Pac. 37.

Editorial Notes.

Duress sufficient to invalidate contracts, what is. 26 Am. Dec. 370.

§ 4978.

The rule here announced is not new; it was invoked by the high court of chancery of England, in 1803. *Post v. Liberty*, 45 Mont. 1, 16, 121 Pac. 475.

Applied, with section 4980, in an action to recover on a promissory note, given as part of the purchase price of an interest in a coal mining lease, the defendant claiming that he was induced by fraud, on the part of the plaintiff, to enter into the contract. *Turk v. Rudman*, 42 Mont. 1, 15, 111 Pac. 739.

In an action for damages for fraud, in the sale of land, whereby the plaintiff was deceived as to the area, the plaintiff makes out a case of fraud where the evidence shows that the defendant made a representation, intending that the plaintiff should act upon it; that it was false; that plaintiff believed and relied upon it; and that he acted upon it to his damage. *Shoudy v. Reeser*, 48 Mont. 579, 588, 142 Pac. 205.

If the owner, in making a sale of land, makes false statements as to its boundaries, the result is a fraud, whether they were made in good or bad faith, and the vendee may rescind or sue for damages. *Post v. Liberty*, 45 Mont. 1, 14, 121 Pac. 475.

An owner of land is supposed to know its boundaries, and his vendee has a right to rely upon his representations as to them; such representations are regarded as those of fact, and, if false, the effect of them is to deceive the intending purchaser. *Post v. Liberty*, 45 Mont. 1, 14, 121 Pac. 475.

Editorial Notes.

Liability of vendor of realty for false representations innocently made. Ann. Cas. 1913C, 63.

Fraud in the sale of real estate. 2 Am. Dec. 77; 28 L. R. A. (N. S.) 202.

Promise not to engage in business in future as fraud sufficient to support action. Ann. Cas. 1913A, 388.

Opinion on question of law by party to contract for sale of land as sufficient basis to support charge of fraud. Ann. Cas. 1913B, 1143.

Right to rely on representations. 37 L. R. A. 593.

Expression of opinion. 35 L. R. A. 417.

False statement as to cost, selling or market price of property, or as to offers therefor. 35 L. R. A. (N. S.) 175.

§ 4980.

If the facts, in an action of fraud, are not controverted and furnish the basis of but one inference, namely, that the defendant is guilty of the fraud alleged, the court may infer the fraud as a matter of law, and direct a verdict in favor of the plaintiff. *Shoudy v. Reeser*, 48 Mont. 578, 587, 142 Pac. 205.

§ 4981.

To defeat a will, the undue influence must have been directed toward the particular testamentary act, and at the time thereof, or so near thereto as to be operative. *Murphy v. Nett*, 47 Mont. 38, 51, 130 Pac. 451.

Facts sufficient to be submitted to the jury, upon the question of "undue influ-

ence" in the making of a will. In *re Murphy's Estate*, 43 Mont. 353, 371, Ann. Cas. 1912C, 380, 116 Pac. 1004.

Editorial Notes.

Undue influence which will invalidate wills. 16 Am. Dec. 659.

§ 4983.

Sections 5029 and 7873, post, are to be construed with this section, in determining the right to redress for mistakes in written instruments; under this section, 4983, freedom from negligence is the condition precedent to the right to such redress. *Hennessy v. Holmes*, 46 Mont. 89, 96, 125 Pac. 132.

If a person directs an attorney to draw a quitclaim deed, and signs the paper drawn, without having read it, he is not, where the instrument proves to be a warranty deed, entitled to relief in an action for damages for a breach of warranty contained in the instrument. *Hennessy v. Holmes*, 46 Mont. 89, 93, 125 Pac. 132.

Failing to read carefully a written instrument, before uttering it, is the neglect of a legal duty, from the consequences of which the person guilty of such negligence cannot have relief. *Hennessy v. Holmes*, 46 Mont. 89, 94, 125 Pac. 132.

One is guilty of negligence in failing to read a note before signing it. *Parchen v. Chessman*, 49 Mont. 326, 338, 143 Pac. 631.

§ 4984.

Sufficiency of complaint in stating a cause of action, based on mutual mistake of law as to the right of succession to a decedent's estate. *Brundy v. Canby*, 50 Mont. 454, 148 Pac. 315.

§ 4991.

To conclude an agreement, the acceptance of the offer must be unconditional and in every respect meet the terms of the offer. *State v. Prison Commissioners*, 37 Mont. 378, 390, 96 Pac. 736, applying this principle in case of a contract with the board of state prison commissioners for the care of inmates of the prison.

§ 4992.

A contract is not created by a mere offer, even though kept open for nearly two months, which is revoked before acceptance. *Donlan v. Arnold*, 48 Mont. 416, 422, 138 Pac. 775.

§ 4999.

Where a contract for the purchase of jewelry, written upon a printed order blank, covering many pages and containing a large variety of all kinds of jewelry of different

quality and price, is so indefinite and uncertain in its terms that the intention of the parties cannot be ascertained, it is not enforceable. *Price v. Stipek*, 39 Mont. 426, 432, 104 Pac. 195.

§ 5001.

A promise to pay a certain duebill is supported by a sufficient consideration, if, by an assignment of wages, the advantage of a possible statutory lien is gained by the promisor and assignee. *Parnell v. Davenport*, 36 Mont. 571, 573, 93 Pac. 939.

Editorial Notes.

Precedent debt as good consideration for chattel mortgage. *Ann. Cas.* 1912B, 79.

Consideration tending to obstruct the administration of justice. 37 Am. Rep. 203.

§ 5004.

A contract to furnish evidence is an entire contract, and void as against the policy of the law. *Hughes v. Mullins*, 36 Mont. 277, 92 Pac. 758.

Editorial Notes.

Consideration which is partly illegal or has partly failed. 117 Am. St. Rep. 493.

§ 5010.

Under this and the next succeeding section, the plaintiff, in an action on a promissory note, is not required to show that there was a consideration given for the note; the law presumes a consideration, and the burden of showing a want of it is upon the defendant. *Ford v. Drake*, 46 Mont. 314, 317, 127 Pac. 1019.

If the court, in an action on a promissory note, erroneously admits evidence, in view of sections 5018, 7873, and 7877, post, as to a conversation or understanding had prior to the execution of the writing, concerning the extent of the maker's liability, such error may be indirectly cured by a refusal to instruct as to such conversation or understanding. *Ford v. Drake*, 46 Mont. 314, 319, 127 Pac. 1019.

§ 5014.

Where the special administratrix had a deposit as such in a bank, and another, claiming to have been appointed special administrator, made demand for the payment to him of the deposit. Upon notice the depositor requested the bank to refuse the demand and retain the deposit in her name. The demandant sued the bank and after the removal of the depositor recovered judgment against the bank for the deposit and interest from the date of demand. The depositor was not liable to the bank for the interest, since there was no implied con-

tract to indemnify the bank. *Murphy v. Nett* (Mont.), 149 Pac. 713.

§ 5017.

Where the interest acquired by a party under a contract is a right to have a conveyance of land to himself, the transfer of that interest, by whatever name called, is a grant of interest in real property which must be in writing. *Flinner v. McVay*, 37 Mont. 306, 312, 15 Ann. Cas. 1175, 19 L. R. A. (N. S.) 879, 96 Pac. 340.

Whether or not a verbal agreement for a lease is invalid under this section will not be determined when the statute is not pleaded. *Mitchell v. Henderson*, 37 Mont. 520, 97 Pac. 942.

Where the creation of an interest, such as an equity in land, must be evidenced by a writing, the transfer of that interest must be evidenced likewise. *Flinner v. McVay*, 37 Mont. 306, 313, 15 Ann. Cas. 1175, 19 L. R. A. (N. S.) 879, 96 Pac. 340.

A contract to pay another's debt must be in writing. *McGowan Com. Co. v. Midland Coal etc. Co.*, 41 Mont. 211, 219, 108 Pac. 655.

A parol agreement for the sale of land is not illegal or absolutely void, but it is voidable, that is, unenforceable; the statute requiring a writing is a weapon of defense, which a party may or may not use for his own protection. *Perkins v. Allnut*, 47 Mont. 13, 14, 130 Pac. 1.

In an action for commissions under a contract to sell realty, the burden of showing that at the time he procured a purchaser there was then an existing contract of employment between himself and defendants such as would be valid under the statute of frauds. *Newman v. Dunleavy* (Mont.), 149 Pac. 970.

Editorial Notes.

Contracts within statute of frauds because not to be performed within year. 93 Am. Dec. 86; 43 Am. Rep. 42.

Agreements not to be performed within a year. 138 Am. St. Rep. 590.

Contract not to be performed within one year, but terminable at option of parties as within statute of frauds. *Ann. Cas.* 1912B, 731; 17 Ann. Cas. 207.

Validity within statute of frauds of contract which is capable of being performed by one party within year and is so performed. 13 Ann. Cas. 916.

Oral contract for year's service to commence in futuro. 2 L. R. A. (N. S.) 738.

Contracts for services which may but are not intended to be performed within a year. 15 L. R. A. (N. S.) 113.

Third persons, promises for the benefit of. 3 Am. Dec. 305; 9 Am. Dec. 155; 35 Am. St. Rep. 331; 71 Am. St. Rep. 178.

Promise to pay the debt of another. 5 Am. Dec. 321; 46 Am. Rep. 296.

Promise to pay debt of another, when need and when need not be in writing. 95 Am. Dec. 251.

Contracts of indemnity, whether within statute of frauds. 42 Am. St. Rep. 186; Ann. Cas. 1912A, 884.

What, within the meaning of the statute of frauds, is a contract to answer for or pay the debt of another. 126 Am. St. Rep. 487.

Promise to pay debt of another out of debtor's property as within statute of frauds. Ann. Cas. 1914B, 446.

Promise to pay debt of another in consideration of relinquishment of lien by promisee as within statute of frauds. Ann. Cas. 1913D, 319.

Contemporary promise of one person to pay where benefit inures to another as a promise to answer for default of another. 15 L. R. A. (N. S.) 214; 32 L. R. A. (N. S.) 598.

Contracts for sale of goods, when within statute of frauds. 9 Am. Dec. 188.

Acceptance and delivery of goods to satisfy statute of frauds. 49 Am. Dec. 325; 37 Am. Rep. 16; 96 Am. St. Rep. 215.

Sale of growing trees, whether within statute of frauds. 86 Am. St. Rep. 182; 17 Am. Rep. 595.

Contracts for the purchase of property not then in existence, whether within statute of frauds. 54 Am. Rep. 164.

Distinction between sales and contracts for work and labor. 14 L. R. A. 230; 30 L. R. A. (N. S.) 319.

Letters, when constitute parts of memorandum. 7 Am. Dec. 288; 42 Am. Rep. 347.

Memorandum, writing of may be in any kind of letters and in pencil. 7 Am. Dec. 288.

Auction sales, memorandum of, sufficient to satisfy statute of frauds. 13 Am. Dec. 398.

Memoranda, what constitute, and by whom must be signed. 47 Am. Rep. 532; 22 L. R. A. 297; 28 L. R. A. (N. S.) 680.

Consideration of a contract, when sufficiently expressed. 60 Am. St. Rep. 432.

Recital "for value received" as sufficient statement of consideration in contract within statute of frauds. Ann. Cas. 1912A, 1242.

Sufficiency of signature by one party only to memorandum required by statute of frauds. Ann. Cas. 1912C,

416; 3 Ann. Cas. 1036; 13 Ann. Cas. 1121.

Sufficiency of printed signature to memorandum within statute of frauds. Ann. Cas. 1913B, 663.

Necessity of written acceptance of written offer to constitute sufficient memorandum under statute of frauds. Ann. Cas. 1913A, 1041.

Several writings as memorandum within statute of frauds. Ann. Cas. 1914C, 1010.

Necessity of delivery of memorandum required by statute of frauds. Ann. Cas. 1914C, 267.

§ 5018.

This section applies to oral negotiations or stipulations concerning the matter of the agreement; if one of the parties was induced to sign the writing, by reason of the other's fraud or deceit with respect to some collateral matter, then he might be heard to complain. Kelly v. Ellis, 39 Mont. 597, 606, 104 Pac. 873.

A contract in writing supersedes all the prior or contemporaneous oral negotiations and stipulations relating to the subject matter of the agreement between the contracting parties; hence, one of them will not be heard to complain that there were other stipulations, unless they pertain to some collateral matter which operated as an inducement to his entering into the principal agreement. Kelly v. Ellis, 39 Mont. 597, 606, 104 Pac. 873.

Editorial Notes.

Parol to engraft condition, limitation or reservation on deed. 1 Am. Dec. 44.

Parol to show warranty outside of contract. 5 Am. St. Rep. 197; 19 L. R. A. (N. S.) 1183.

Parol to add to or vary a writing. 56 Am. St. Rep. 659; 17 L. R. A. 270.

Parol to explain mercantile and other contracts. 6 Am. Rep. 678; 28 Am. Rep. 210.

Admissibility of parol evidence to explain interlineations or alterations made before execution of written instrument. Ann. Cas. 1913C, 344.

Admissibility of evidence extrinsic to lease to show agreement by landlord to repair. Ann. Cas. 1913E, 37.

Admissibility of parol evidence to show waiver of provision in written antenuptial contract. Ann. Cas. 1912B, 279.

Admissibility of parol evidence to show when indorsement was made on note. Ann. Cas. 1913A, 882.

§ 5025.

This section simply means that the intention of the parties shall be ascertained, in

the first instance, by reference to the language employed by them; if the words used are clear, certain and unambiguous, interpretation cannot be resorted to. *Quirk v. Rich*, 40 Mont. 552, 558, 107 Pac. 821; *Frank v. Butte etc. Lumber Co.*, 48 Mont. 83, 89, 135 Pac. 904.

Contracts of insurance, like all others, must be construed with a view to carrying out the intention of the parties. *McAuley v. Casualty Co.*, 39 Mont. 185, 192, 102 Pac. 586.

If a contract is plain and unambiguous, it needs no construction; the court's duty is to enforce it as made by the parties. *Frank v. Butte etc. Lumber Co.*, 48 Mont. 83, 89, 135 Pac. 904.

Where there is ambiguity in a contract, it is open, under this section and section 5036, post, to interpretation, by the aid of evidence aliunde, so as to give effect to the mutual intention of the parties to it at the time it was made. *Butte Water Co. v. City of Butte*, 48 Mont. 386, 397, 138 Pac. 195.

§ 5028.

There can be no limitation of the liability of a carrier without the assent of the shipper, and there can be no stipulation for any exemption by a carrier which is not just and reasonable in the eye of the law. Inside of these limitations, however, a carrier may modify his responsibility by special contract with the shipper. *Rose v. Northern Pac. Ry. Co.*, 35 Mont. 70, 77, 119 Am. St. Rep. 836, 88 Pac. 767.

Where a contract is signed by the parties thereto, and a third person, not a party to the contract, appends his name, under the other signatures, preceded by the words, "I hereby consent to the above contract," he is not bound beyond his engagement so expressed. *The Henry O. Shepard Co. v. Freeman*, 40 Mont. 144, 155, 105 Pac. 484.

§ 5030.

Applied, in interpreting a contract between a city and a water company. *Butte Water Co. v. City of Butte*, 48 Mont. 386, 396, 138 Pac. 195.

The intention of parties to deeds is ascertained, if possible, from the language thereof, viewed in its entirety, and not as it is presented in particular paragraphs or sentences. *R. M. Cobban Realty Co. v. Donlan* (Mont.), 149 Pac. 434.

§ 5031.

Where different writings have relation to the same subject matter, the last referring to the others, the intention of the parties must be ascertained by construing all of the writings together as one entire contract. *Lyon v. Dailey Copper M. & S. Co.*, 46 Mont. 108, 120, 126 Pac. 931.

Where a person, in several writings, agrees with a mining corporation, among other things, to sell all of its treasury stock, in consideration of receiving a designated

number of shares; where he agrees that he is not to be entitled to such shares until he has completed the sale of the treasury stock; and where he sells only a small part of such stock and abandons the enterprise, he loses his right to claim under the contract; the several writings constitute but one agreement. *Lyon v. Dailey Copper M. & S. Co.*, 46 Mont. 108, 120, 126 Pac. 931.

Where a bond is given to secure rent, it is not nudum pactum, on the theory that a past consideration will not support an undertaking, though it is signed after the lease of the property has been executed, where both instruments are executed on the same day and where the lease is referred to in the bond and made a part thereof; they must be construed as having been executed contemporaneously and as amounting to one instrument. *Dodd v. Vucovich*, 38 Mont. 188, 191, 99 Pac. 296.

§ 5032.

Application of section to contract for conveyance of land not owned at the time. *Lawson v. Cobban*, 38 Mont. 138, 140, 99 Pac. 128.

§ 5033.

The word "firm," as used in a will, is given its ordinary rather than its technical legal sense in *Estate of Klein*, 35 Mont. 205, 88 Pac. 798.

Where there are no technical words in a contract, the words must be given their ordinary and popular meaning. *Frank v. Butte etc. Lumber Co.*, 48 Mont. 83, 90, 135 Pac. 904.

A written contract that a loan to a corporation shall be repaid monthly "out of the first earnings of its business, after deducting running expenses" does not create a general liability on the part of the company, to be paid after a reasonable time, but makes the indebtedness payable out of a special fund, consisting of the net proceeds, as rapidly as they accumulate. *Frank v. Butte etc. Lumber Co.*, 48 Mont. 83, 90, 135 Pac. 904.

§ 5036.

Application of section to contract for conveyance of land not owned at the time. *Lawson v. Cobban*, 38 Mont. 138, 141, 99 Pac. 128.

§ 5041.

This section is a rule of interpretation rather than of construction. *Butte Water Co. v. City of Butte*, 48 Mont. 386, 397, 138 Pac. 195.

Applied, in interpreting a contract between a city and a water company. *Butte Water Co. v. City of Butte*, 48 Mont. 386, 397, 138 Pac. 195.

Editorial Notes.

Repugnant clauses in contracts, which shall prevail. 60 Am. St. Rep. 93.

§ 5043.

If any uncertainty remains in the terms and expressions employed in a contract, after applying the ordinary rules of construction, these terms and expressions must be construed most strongly against the party who caused the uncertainty to exist. *Lyon v. Dailey Copper M. & S. Co.*, 46 Mont. 108, 120, 126 Pac. 931.

If there is any uncertainty, in a contract of life insurance, as to the intention of the parties, the language of the contract must be interpreted most strongly against the party who caused the uncertainty to exist. *Pelican v. Mutual Life Ins. Co.*, 44 Mont. 277, 287, 119 Pac. 778.

§ 5047.

Facts, in view of which, in a suit for specific performance, by the vendee in an oral contract to sell real property, it was held that time was not of the essence of the agreement. *Stevens v. Trafton*, 36 Mont. 520, 529, 93 Pac. 810.

When parties have deliberately made time of the essence of the contract, they must, in the absence of waiver or estoppel, expect that the provision will be given full force and effect. *Fratt v. Daniels-Jones Co.*, 47 Mont. 487, 500, 133 Pac. 700.

When the provision that time is of the essence of the contract is included in the contract, it is the duty of courts to carry out the intention of the parties by giving effect to that provision. *Fratt v. Daniels-Jones Co.*, 47 Mont. 487, 496, 133 Pac. 700.

Time is not of the essence of a contract of sale, where the time and place of delivery are stated, but there is nothing in the contract to indicate that the time of delivery is of its essence. *Curtis & Freeman v. Parham*, 49 Mont. 140, 144, 140 Pac. 511.

Editorial Notes.

Time, when stipulations show it is made the essence of contracts. 50 Am. Dec. 597.

Time, when of the essence of, in contracts for the sale of land. 104 Am. St. Rep. 265.

§ 5051.

A contract made by a board of county commissioners, a few weeks before the expiration of its term of office, for county printing for the two succeeding years, is valid in the absence of fraud or bad faith. *Picket Pub. Co. v. Board of County Commrs.* 36 Mont. 188, 122 Am. St. Rep. 352, 12 Ann. Cas. 986, 13 L. R. A. (N. S.) 1115, 92 Pac. 524.

A contract by railway company with a passenger, limiting the liability of the carrier to one hundred dollars for loss of baggage, is valid. *Rose v. Northern Pac. Ry. Co.*, 35 Mont. 70, 78, 119 Am. St. Rep. 836, 88 Pac. 767.

A failure to perform an act imposed by law as an absolute duty is an unlawful omission. *Conway v. Monidah Trust*, 47 Mont. 269, 278, 132 Pac. 26.

§ 5054.

Application of this section and of section 5056, post, to a contract of sale of a traction engine and outfit, accompanied by warranties. *Best Mfg. Co. v. Hutton*, 49 Mont. 78, 93, 141 Pac. 653.

Where a contract of purchase provides that a failure to make any deferred payment shall work an immediate forfeiture of the contract, the contract, in so far as it provides for liquidated damages, may be void and of no effect under this section; still, in any event, the defaulting purchaser, in the absence of a showing on his part, such as would appeal to the conscience of a court of equity, is not entitled to a return of any part payment of the purchase price made by him, though he asks for it. *Fratt v. Daniels-Jones Co.*, 47 Mont. 487, 496, 133 Pac. 700.

One who seeks to recover upon a contract that provides for liquidated damages, on a breach thereof, must allege and prove that it falls within the exception provided in section 5055, post. *Clifton v. Willson*, 47 Mont. 305, 312, 132 Pac. 424.

Editorial Notes.

Rights and remedies of seller, in conditional sales, when buyer defaults in payment of purchase price. 133 Am. St. Rep. 563.

§ 5057.

This section is not a novel statute; it is but declaratory of the common law. *Schwaneckamp v. Modern W. O. A.*, 44 Mont. 526, 533, 120 Pac. 806.

A statute of this character refers only to a contract which, by its terms, restrains a party to it from exercising a lawful business, and the breach of which subjects the delinquent to liability. *Schwaneckamp v. Modern W. O. A.*, 44 Mont. 526, 532, 120 Pac. 806.

A clause in a contract of insurance, entered into between a member of a fraternal society and the association, providing that the certificate of insurance shall be void if the insured engages in the sale of intoxicating liquor in any capacity, is valid and binding. *Schwaneckamp v. Modern W. O. A.*, 44 Mont. 526, 533, 120 Pac. 806.

Editorial Notes.

Unlawful combinations in restraint of trade at common law. Ann. Cas. 1914A, 430.

§ 5063.

Where the terms of a contract between a vendor and a purchaser have not been

complied with by the latter, and the vendor seeks to have the contract canceled as a menace to his title, having asserted his right under the express stipulation therein to declare it no longer binding upon him because of a breach of it by the purchaser, the complaint need not contain any allegation on the subject of restoration; such an action, like one to rescind, is an action of equitable cognizance, but the two actions are wholly different in their scope and purpose, and the rules applicable to the one have no application to the other. *Suburban Homes Co. v. North*, 50 Mont. 108, 145 Pac. 2.

Rescission requires the party seeking to rescind to restore, or offer to restore, to the other party everything of value received by the former under the contract, upon condition that the latter will do likewise; if he seeks the aid of a court of equity, he must aver that he has done this, or set forth exculpatory facts. *Suburban Homes Co. v. North*, 50 Mont. 108, 145 Pac. 2.

Editorial Notes.

Rescission of contracts, when, how, and by whom may be made. 50 Am. Dec. 672.

Rescission, how and within what time right of must be exercised. 74 Am. Dec. 657.

Rescission of contract by substitution of new contract between same parties. Ann. Cas. 1912A, 1258.

Contracts, abandonment, or countermanding of one party. 94 Am. St. Rep. 119.

§ 5065.

Relief in case of forfeiture. See note ante, § 5054; post, § 6039.

The right to set aside a deed to mining property on the ground of fraud may be barred by laches in prosecuting a suit therefor, notwithstanding the plaintiffs reside in a foreign country and are ignorant of our language and institutions. *Streicher v. Murray*, 36 Mont. 59, 92 Pac. 36.

The prompt action required by this section is after discovery. *Brundy v. Canby*, 50 Mont. 454, 148 Pac. 315.

The whole doctrine of restoration under this section and section 6113, post, is equitable, and requires merely that the party against whom rescission is adjudged shall be no worse off than before the contract. *Brundy v. Canby*, 50 Mont. 454, 148 Pac. 315.

As to either a mistake of law or a mistake of fact, laches may arise from a culpable neglect, to discover, but a court is not required to impute laches from a delay in discovery for a period of less than nine months, merely because the mistake is one of law. *Brundy v. Canby*, 50 Mont. 454, 148 Pac. 315.

Mistakes of law and mistakes of fact are, as possible bases for rescission, in *pari materia*; there is not, either as to the duty of discovery or the time of commencing suit, any distinction between them. *Brundy v. Canby*, 50 Mont. 454, 148 Pac. 315.

Whether a case is or is not one of laches depends upon the circumstances affecting the party who seeks relief as well as the party against whom relief is sought; where the circumstances are such as to excuse a failure to discover, where also the situation of the parties has not changed, no occasion is offered to apply the doctrine of laches. *Brundy v. Canby*, 50 Mont. 454, 148 Pac. 315.

To authorize the rescission of a contract of purchase, the buyer must, upon the discovery of facts authorizing a rescission, act promptly; the question of promptness is one for the jury. *Hillman v. Luzon Cafe Co.*, 49 Mont. 180, 188, 142 Pac. 641.

Where the plaintiff seeks to rescind a contract on the ground of fraud, the defendant is entitled to know when he discovered the facts constituting the fraud; a just ground for rescission may be lost by laches. *Ott v. Pace*, 43 Mont. 82, 89, 115 Pac. 37.

The rules prescribed by this section, touching rescission, are inapplicable to an action to enforce an immediate forfeiture of a contract of purchase for the vendee's failure to make any deferred payment, where the contract provides that such failure shall work an immediate forfeiture; hence, it is not necessary for the complaint, in such last-named action, to set out facts sufficient to constitute a cause of action for the rescission of a contract. *Fratt v. Daniels-Jones Co.*, 47 Mont. 487, 495, 133 Pac. 700.

Where one party to a contract is seeking its rescission, he must act promptly upon discovering the facts that entitle him to rescind; hence, if he seeks to rescind on the ground of fraud, he must act with reasonable promptness after discovering the fraud, and his complaint should show when the discovery was made; otherwise, it is vulnerable to a special demurrer, on the ground of being ambiguous, unintelligible, and uncertain. *Ott v. Pace*, 43 Mont. 82, 115 Pac. 37.

Though the complaint, in a suit to rescind a contract for the sale of real and personal property, does not contain any specific allegation that the defendant has been placed in statu quo, it will be treated as amended in that respect, after the plaintiff has offered evidence tending to show that he has restored to the defendant everything received from him under the contract. *Post v. Liberty*, 45 Mont. 1, 17, 121 Pac. 475.

§ 5067.

A note and chattel mortgage given to secure it are not affected by an unexecuted

oral agreement in respect to the time and manner of payment. *Kinsman v. Stanhope*, 50 Mont. 41, 144 Pac. 1083.

§ 5069.

The party procuring the alteration of a written contract cannot maintain any action upon the contract in either its original or altered form, but the nonconsenting party loses no right, and is not required to rescind or repudiate the contract, and may hold the other party to the terms of the original contract. *Smith v. Barnes* (Mont.), 149 Pac. 963.

§ 5072.

If a person sells a sheep business owned by him, in view of being subsequently employed as a manager thereof, according to oral agreement, but the memorandum of sale does not contain any reference to his employment as manager, he cannot maintain an action for deceit; his consent to the writing completely superseded the prior oral negotiations, including the promise to employ him, and section 5018, ante, forbids him to say that there ever was any oral promise for his employment. *Kelly v. Ellis*, 39 Mont. 597, 608, 104 Pac. 873.

§ 5082.

Where personalty is sold under a contract providing that title shall remain in the seller until the purchase price is paid, the transaction is a mere executory agreement of sale, accompanied by the delivery of possession to the intending purchaser, to be held by him pending payment of the purchase price, and the title remains in the vendor until payment has been made. *State ex rel. Malin-Yates Co. v. Justice of Peace Court* (Mont.), 149 Pac. 709.

§ 5091.

Where it appears from the plaintiff's evidence in a suit for specific performance of an oral contract to sell real property that he has fully performed all the terms of the agreement and that the defendant has put him into possession and that he has erected substantial improvements, the court has power to grant the relief asked for. *Stevens v. Trafton*, 36 Mont. 528, 93 Pac. 810.

Where it is sought to found a claim, as for a right of way, to a part of a ranch, based upon oral negotiations, and the owner is dead, this section furnishes to the heirs their only defense; if there was, in fact, an agreement to convey the right of way, the owner's death would not necessarily defeat a right to have specific performance

§ 5075.

Where a contract has been made to sell real estate and personal property, and possession has been given to the former and delivery made of the latter, but the purchaser repudiates the contract, and the vendor rescinds, the purchaser is bound, without demand, to restore to the vendor the personalty received, and to compensate him for the use and occupation of the land. *Hicks v. Rupp*, 49 Mont. 40, 46, 140 Pac. 97.

§ 5079.

Where an application is made for a loan, to be secured by a pledge of corporate stock, the transaction will be considered a pledge, unless it is made to appear that the parties have afterward contracted for an absolute sale. *Murray v. Butte-Monitor T. M. Co.*, 41 Mont. 449, 457, 110 Pac. 497.

Where property is sold under a contract providing that title shall remain in the seller until the purchase price is paid, the transaction is not a sale. *State ex rel. Malin-Yates Co. v. Justice of Peace Court* (Mont.), 149 Pac. 709.

SALES.

decreed, but to authorize this the terms of the contract must be definite and full and be made out by clear and unambiguous proof. *Lewis v. Patton*, 42 Mont. 528, 534, 113 Pac. 745.

Editorial Notes.

Contracts relating to real estate. 17 Am. Dec. 58; 102 Am. St. Rep. 230.

Parol exchange of lands as affected by statute of frauds. Ann. Cas. 1912A, 308.

Oral agreement by vendor to make title to land good as within statute of frauds. Ann. Cas. 1913D, 1239.

Possession taken by vendee in parol contract for sale of land without knowledge or consent of vendor and not in pursuance of contract as part performance satisfying statute of frauds. Ann. Cas. 1913E, 510.

Validity of oral agreement by mortgagor of realty to deliver possession to mortgagee. Ann. Cas. 1914C, 926.

Validity of statute requiring contract providing for commission for sale of realty to be in writing. Ann. Cas. 1913C, 727.

Parol partnership for dealing in lands. 16 L. R. A. 745; 4 L. R. A. (N. S.) 427; 33 L. R. A. (N. S.) 883.

§ 5092. Conditional Sales—Filing Contracts.

All contracts, notes and instruments for the transfer or sale of personal property, where the title is stipulated to remain in the vendor until the

payment of the purchase price or some part thereof, shall be in writing, and the original or true copy thereof, certified by the county clerk and recorder, shall be filed with the county clerk and the recorder of the county wherein the property is situated; otherwise, any such contract, note or instrument is void as to bona fide purchasers, mortgages or attaching creditors of such property prior to such filing. [Amendment approved February 25, 1911; Laws 1911, p. 88.]

In an action of claim and delivery, to recover cattle which the defendant claims to have purchased from a third person in possession of them, but which the plaintiff claims to have let to such third person, under an agreement amounting to a bailment, with an option to such third person to purchase, the trial court should, in submitting the case to the jury, where there is no evidence of any contract in writing and consequently no contract filed as required by this section, instruct them that, if they find that the transaction between the plaintiff and such third person amounted to such an agreement, and further find that the defendant purchased property from such third person while in his possession, then their verdict shall be for the defendant. *Cuerth v. Arbogast*, 48 Mont. 209, 217, 136 Pac. 383.

Editorial Notes.

What constitutes a conditional sale. 94 Am. St. Rep. 234.

Rights of the parties to a conditional sale, when the property is destroyed. Ann. Cas. 1913C, 661, Ann. Cas. 1913D, 338.

Rights and remedies of seller, in conditional sales, when buyer defaults in payment of purchase price. 133 Am. St. Rep. 563.

§ 5104.

What evidence falls short of showing the breach of a warranty of a plow as fit for sod-breaking, assuming that there was such a warranty. *Jones v. Armstrong*, 50 Mont. 168, 145 Pac. 949.

There is no implied warranty in a sale of examinable merchandise, where the buyer does not rely upon the seller's judgment, and where the buyer knows that the seller

is not a dealer nor manufacturer. *Jones v. Armstrong*, 50 Mont. 168, 145 Pac. 949.

Editorial Notes.

Quality, warranty of, what amounts to. 1 Am. Dec. 84.

Warranties implied on a sale of chattels. 24 Am. Rep. 181; 6 Am. Dec. 113; 33 L. R. A. (N. S.) 502.

Warranty of quality, when implied. 2 Am. Dec. 220; 55 Am. Dec. 328; 102 Am. St. Rep. 607; 35 L. R. A. (N. S.) 258.

Warranty of soundness, when implied. 43 Am. Dec. 680.

Warranty of soundness, what defects constitute breaches of. 53 Am. Dec. 173.

Implied warranty on sale of nursery stock. Ann. Cas. 1913E, 93.

Implied warranty by seller that animal is fit for breeding purposes. 19 Ann. Cas. 874.

Warranty on sale of goods by sample. 70 L. R. A. 654.

§ 5110.

If there is a breach of warranty where articles have been bought for a particular purpose, the buyer is not bound to rescind the contract and restore the articles; he may set up his claim for damages by way of counterclaim in an action by the seller for the purchase price. *Busbee v. Gagnon Co.*, 50 Mont. 203, 146 Pac. 275.

§ 5121.

Applied to the sale of a seed drill. *Doornbos v. Thomas*, 50 Mont. 370, 147 Pac. 277.

BAILMENTS.

§ 5138.

Where a party let defendant have a check on the agreement that he should use the proceeds for cashing checks and repay the amount on a certain day, defendant was not guilty of larceny as bailee, where he used it for other purposes and did not repay it, as the transaction was a loan for exchange and the title passed to defendant. *State v. Karri* (Mont.), 149 Pac. 956.

A bank accepting a deposit for the purpose of exchange becomes the creditor of the depositor. *Murphy v. Nett* (Mont.), 149 Pac. 713.

§ 5140.

This section refers only to the obligation resting upon the depositary to deliver; it cannot be applied in resisting the payment of interest on moneys deposited to indemnify sureties on a bond against loss. *Leggat v. Palmer*, 39 Mont. 302, 308, 102 Pac. 327.

A cause of action does not arise in favor of a depositor until demand and refusal, unless the depositary has waived demand. *Cassidy v. Slemmons & Booth*, 41 Mont. 426, 428, 109 Pac. 976.

In a cause of action counting upon a certificate of deposit, a demand, if necessary, must be alleged in the complaint. *Cassidy v. Slemmons & Booth*, 41 Mont. 426, 429, 109 Pac. 976.

Where money is to become due only after notice or demand, it is necessary for the plaintiff to allege and prove that the required notice or demand was given or made, except in a case where the defendant has denied all liability upon the contract pleaded by the plaintiff; in such a case, a demand would be a wholly useless thing. *Cassidy v. Slemmons & Booth*, 41 Mont. 426, 430, 109 Pac. 976.

§ 5142.

Where a special administratrix had a deposit as such in a bank, and another claiming to have been appointed special administrator made demand on the bank for the payment of the deposit, and the bank notified the depositor of the demand and was requested to refuse the demand and retain the deposit in the depositor's name, and thereupon the demandant sued the bank, and, after the removal of the depositor, demandant recovered judgment against the bank for the deposit and interest from the date of the demand, the depositor was not liable to the bank for the interest. *Murphy v. Nett* (Mont.), 149 Pac. 713.

FINDING.

§ 5178.

Assuming that sections 5178-5186, relating to lost property, include the finding of estray, domestic animals, such as a band of sheep, one who sues for compensation and reward for finding, taking care of, and feeding them, does not, in his complaint, state a cause of action under these sections, if it omits to allege that the animals were in fact lost. *Kirk v. Smith*, 48 Mont. 489, 492, 138 Pac. 1088.

The complainant in an action on a liability or obligation imposed by special statute must state facts that bring the plaintiff squarely within its terms. *Kirk v. Smith*, 48 Mont. 489, 492, 138 Pac. 1088.

Editorial Notes.

Law of estrays. 8 Am. St. Rep. 271; 90 Am. St. Rep. 211.

dinary compensation, except in so far as this rule is modified by section 5159, ante. *Kirk v. Smith*, 48 Mont. 489, 493, 138 Pac. 1088.

The term "reward," as used in this section, means remuneration or pay; it is used in the same sense in section 5154, ante; and, see its use in section 5146, ante. *Kirk v. Smith*, 48 Mont. 489, 494, 138 Pac. 1088.

In an action for compensation for finding, taking care of, and feeding a band of sheep, the plaintiff must recover on the basis of compensation alone; he is not entitled to recover a gratuity; but he can recover for his services, though the sheep have been mingled with other sheep, if he can show the value of the proportion of his time, labor, feed, etc., given to the estrays. *Kirk v. Smith*, 48 Mont. 489, 494, 138 Pac. 1088.

§ 5181.

This section must be construed with section 5178, supra; and, when so construed, the terms of section 5181 are plain. A depositary for hire is entitled only to or-

§ 5187.

A bank accepting a deposit becomes the creditor of the depositor though the depositor is an administrator. *Murphy v. Nett* (Mont.), 149 Pac. 713.

LOANS AND INTEREST.

§ 5201.

Where a party let defendant have a check on the agreement that he should use the proceeds for cashing checks and repay the amount on a certain day, defendant was not guilty of larceny as bailee where he used it for other purposes and did not

repay it, as the transaction was a loan for exchange and the title passed to defendant. *State v. Karri* (Mont.), 149 Pac. 956.

§ 5206.

Applied in *Eisenberg v. Goldsmith*, 42 Mont. 563, 576, 113 Pac. 1127.

§ 5212. Interest in Excess of Twelve Per Cent—Recovery of Interest Illegally Exacted.

(Section 1.) Parties may agree, in writing, for the payment of any rate of interest not exceeding the rate of twelve (12%) per cent per annum, and it shall be allowed, according to the terms of the agreement, until the entry of judgment.

(Section 2.) The taking, receiving, reserving or charging a rate of interest greater than is allowed by the preceding section of this act, shall

be deemed a forfeiture of a sum double the amount of interest which the note, bill, or other evidence of debt carries, or which has been agreed to be paid thereon.

When a greater rate of interest has been paid, the person by whom it has been paid, his heirs, assigns, executors or administrators, may recover from the person, firm or corporation taking, receiving, reserving or charging same, a sum double the amount of interest so paid; provided, that such action shall be brought within two years after the payment of said interest; and provided, that before any suit may be brought to recover such usurious interest, the party bringing suit must make written demand for return of said interest so paid. [Amendment approved February 27, 1913; Laws 1913, p. 51.]

Editorial Notes.

Interest, agreement to pay a higher rate after maturity or after a date specified. 63 Am. Dec. 438.

Interest, when allowable in the absence of an express contract. 28 Am. Rep. 314.

When continues at conventional rate after maturity. 30 Am. Rep. 47; 34 Am. Rep. 253; 47 Am. Rep. 70.

Compound interest, when not recoverable. 34 Am. Rep. 101.

Increase of interest after maturity, provisions for, when valid. 53 Am. Rep. 21; 91 Am. St. Rep. 584.

Acceptance of principal sum as affecting right to interest. 40 L. R. A. (N. S.) 588.

Notes, when void for usury. 2 Am. Dec. 155.

Sale of negotiable paper, when deemed usurious and when not. 40 Am. Dec. 256.

What is usury, and when available as a cause of action or defense. 55 Am. Dec. 392.

What transactions are usurious. 81 Am. Dec. 736; 46 Am. St. Rep. 178.

Purchase of accommodation paper at discount in excess of legal rate with-

out notice of nature thereof as usury. Ann. Cas. 1912D, 887.

Who besides the principal debtor may urge the defense of usury. 28 Am. Rep. 491.

Place where contract is deemed made within the meaning of the law respecting usury. 55 Am. Rep. 609.

Availability of defense of usury to purchaser of property charged with usurious debt. Ann. Cas. 1912B, 224.

Effect on contract made void by statutory or constitutional provision of subsequent repeal of such provision. Ann. Cas. 1913C, 1398.

Interest on overdue interest as usury. 4 Ann. Cas. 463; 18 L. R. A. (N. S.) 633.

Agreement for interest after maturity. 49 L. R. A. 550.

Exaction from borrower of expenses of loan as usury. Ann. Cas. 1914C, 410.

§ 5214.

A mortgage debt, after a decree of foreclosure, becomes merged in the judgment, and, in a subsequent action, looking to the redemption of the property, interest is properly allowed at eight per cent per annum. *Toole v. Weirick*, 39 Mont. 359, 365, 133 Am. St. Rep. 576, 102 Pac. 590.

HIRING—LEASE.

§ 5216.

This action has no application in an action to recover possession of a mare and her colt, where there is nothing to show that the plaintiff was a hirer of the dam. *Frank v. Symons*, 35 Mont. 62, 88 Pac. 561.

§ 5226.

The rule of this section should not be given in an instruction to the jury when there is no allegation in the complaint to

the effect that the premises were not in a fit condition for occupation, and the plaintiff nowhere makes that excuse in his testimony. *Mitchell v. Henderson*, 37 Mont. 515, 519, 97 Pac. 942.

§ 5228.

Where a store building is leased, and there is no testimony of any usage on the subject, the lease is presumed to run for at least one year. *Giovanetti v. Schab*, 41 Mont. 297, 302, 109 Pac. 141.

MASTER AND SERVANT.

§ 5243.

Beyond the ordinary risks of the employment, an employee does not assume any

risk, except by express agreement, or where the circumstances are such that he must be presumed to have done so from the fact that he continued in the employment,

though the extraordinary danger was known to him, or was so obvious that he must be presumed to have had knowledge of it. *Schroder v. Montana Iron Works*, 38 Mont. 474, 478, 100 Pac. 619.

An employee is conclusively presumed to have assumed the ordinary risks of the employment; this is a part of his contract of service. *Schroder v. Montana Iron Works*, 38 Mont. 474, 478, 100 Pac. 619.

Editorial Notes.

Assumption of risk and contributory negligence. 97 Am. St. Rep. 886.

Risks assumed by servant. 52 Am. Rep. 737.

Risks, knowledge of master concerning, how far servant may rely on. 24 Am. St. Rep. 320.

Liability to servant volunteering upon a duty with which he is not charged. 85 Am. St. Rep. 622.

Extrahazardous duties, right of recovery by employees accepting. 97 Am. St. Rep. 884.

Applicability of doctrine of assumption of risk to lineman. Ann. Cas. 1912B, 467; 15 Ann. Cas. 598.

Liability of mine owner to servant for injuries caused by falling of roof of mine. Ann. Cas. 1912B, 577.

Assumption of risk on failure of employer to perform statutory duty. Ann. Cas. 1913C, 210.

Assumption of risk as affected by master's promise to repair. Ann. Cas. 1913C, 505; 4 Ann. Cas. 153; 9 Ann. Cas. 1011.

Liability of railroad to employee injured by object falling from passing train. Ann. Cas. 1913D, 48.

Duty of employee to disclose to master matters coming to his knowledge before entering or outside scope of employment. Ann. Cas. 1913E, 819.

Duty and liability of master to servant with respect to animal furnished by him to servant. 19 Ann. Cas. 863.

Assumption of risk in case of unguarded shafting. Ann. Cas. 1914A, 658.

Volenti non fit injuria as a defense. 47 L. R. A. 162.

May servant assume the risk of dangers created by the master's negligence. 4 L. R. A. (N. S.) 848; 28 L. R. A. (N. S.) 1215.

§ 5244.

This section is directly applicable to cases arising between master and servant on account of personal injuries sustained

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by the latter in the course of his employment, and an instruction embodying it is properly submitted to the jury. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 34, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

An examination of sections 5253, 5295, 5299, 5300, 5306, 5331, 5354, and 5355, post, will show that degrees of negligence are recognized in this state. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 29, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

A master owes the same duty to his servant that a carrier owes to "an unpaid passenger"; that is, to exercise ordinary care for his safety. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 34, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

Conceding that degrees of negligence are recognized in this state, a plaintiff, under an allegation of gross negligence, may rely for a recovery upon any lesser degree of negligence. *Neary v. Northern Pac. Ry. Co.*, 41 Mont. 480, 508, 110 Pac. 226.

Where the doctrine of the maxim, "res ipsa loquitur" may be invoked to raise a presumption of want of care, it is want of ordinary care, to which reference is made. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 34, 32 L. R. A. (N. S.), 85, 111 Pac. 632.

§ 5245.

Effect of distinction between degrees of negligence. See note ante, § 5244.

Responsibility for negligence. See ante, § 5077.

Editorial Notes.

Fellow-servants, employees of railways, who are not. 53 Am. Rep. 621.

§ 5248.

This section makes a mining company answerable for injuries to its employees, under the maxim *respondeat superior*; but, if an action for wrongful death is brought jointly against the company and a hoisting engineer, and the verdict is against the company but is silent as to the engineer, the jury's failure to find as to him is not a finding that he was not guilty of negligence on his part, but should be regarded as no finding as to him. *Melzner v. Raven Copper Co.*, 47 Mont. 351, 359, 132 Pac. 552.

This section declares who are vice principals, and modifies the common-law rule that the master is not liable for injuries caused to an employee by the negligence of a fellow-servant; it creates a liability, where none existed before its enactment, by taking away a defense that was theretofore available to the master. *Thurman v. Pittsburg & M. Copper Co.*, 41 Mont. 141, 150, 108 Pac. 588.

The term "shift-boss" means a master workman, who directs the operations of a set of men who work in turn with other sets. *Johnson v. Butte etc. Copper Co.*, 41 Mont. 158, 170, 48 L. R. A. (N. S.) 938, 108 Pac. 1057.

An action under this section is not a "purely statutory action"; the purpose and effect of this section are to classify the employees in mines, mills and smelters by declaring who, among them, are vice-principals; to make the employer answerable, in certain cases, under the maxim respondent superior; and, in such cases, to take away a defense that had been available before the passage of the statute. *Melzner v. Raven Copper Co.*, 47 Mont. 351, 357, 132 Pac. 552.

If the injury complained of is alleged to be that of a fellow-servant, the injured servant cannot recover in a common-law action, but must declare under the statute. *Kinsel v. North Butte Min. Co.*, 44 Mont. 445, 446, 120 Pac. 797.

An action for personal injuries, founded upon actionable negligence, is not governed, as to its limitation, by section 6449, ante. *Beeler v. Butte etc. Development Co.*, 41 Mont. 465, 473, 110 Pac. 528.

If the injury complained of is the result of the negligence of a fellow-servant, combined with the negligence of the master, the defense of a fellow-servant's negligence is not available. *Stewart v. Stone & Webster Eng. Corporation*, 44 Mont. 160, 173, 119 Pac. 568.

The complaint, in an action under this section, need not allege that the injury sustained was caused without contributory negligence on the plaintiff's part; such negligence is a matter of defense, to be asserted and shown by the defendant employer, unless it is made plain by the plaintiff's own pleading or proof. *Melzner v. Raven Copper Co.*, 47 Mont. 351, 357, 132 Pac. 552.

A complaint, charging the defendant company and its foreman with primary negligence in failing to use ordinary care to furnish the plaintiff a safe place to work, but failing to allege any specific acts of negligence on the part of the foreman, imputable to the master, fails to state a cause of action within this section. *Thurman v. Pittsburg & M. Copper Co.*, 41 Mont. 141, 151, 108 Pac. 588.

If a party relies for a recovery upon a special statute, creating a liability, where none existed before, he must set forth, in ordinary and concise language, a statement of facts showing his right to recover under that statute. *Thurman v. Pittsburg & M. Copper Co.*, 41 Mont. 141, 150, 108 Pac. 588.

Editorial Notes.

Liability of master for negligence of supervising employee in mine for acts done outside the scope of his statutory duty. 48 L. R. A. (N. S.) 938.

§ 5250.

The right of action to recover damages for injuries to a mine employee, alleged to have been caused by the negligence of a fellow-servant, survives to, and may be prosecuted and maintained by, the heirs or personal representatives of the deceased. *Beeler v. Butte etc. Development Co.*, 41 Mont. 465, 472, 110 Pac. 528.

§ 5251.

This section abolishes the fellow-servant rule. *Moyse v. Northern Pac. Ry. Co.*, 41 Mont. 272, 282, 108 Pac. 1062.

This section enlarges the common-law liability of persons or corporations operating railroads. *Cunningham v. Northwestern Imp. Co.*, 44 Mont. 180, 216, 119 Pac. 554.

Under this section, sections 5252 and 6494, the right of action accruing to an injured employee survives, in case of his death, and may be prosecuted to judgment by his representative, whether such employee commenced an action in his lifetime or not. *Melzner v. Northern Pac. Ry. Co.*, 46 Mont. 277, 286, 127 Pac. 1002.

If a person is injured while employed by a railroad company engaged in interstate commerce, and subsequently dies of his injuries, a right of action survives to his personal representative, for the benefit of certain named beneficiaries, and the proper party plaintiff is the personal representative of the decedent; the right of recovery, however, is determinable by the provisions of the federal employer's liability act, which impliedly supersedes all state statutes on the subject. *Melzner v. Northern Pac. Ry. Co.*, 46 Mont. 277, 288, 127 Pac. 1002.

Editorial Notes.

Joint liability of master and servant for tort of servant. 25 L. R. A. (N. S.) 356.

Fellow-servants, employees of railways, who are not. 53 Am. Rep. 621.

Kind of railroad intended by statutory or constitutional provision abrogating fellow-servant doctrine as to railroad employees. Ann. Cas. 1912D, 648.

§ 5252.

The provisions of this section and of the next preceding one, constitute a survival statute, and do not create a new cause of action in favor of the heirs for damages sustained by them by reason of the death of the deceased. *Dillon v. Great Northern Ry. Co.*, 38 Mont. 485, 496, 501, 100 Pac. 960.

Where death was instantaneous, there is no survival of an action in the heirs; the wrong and the death of the decedent having been coincident in point of time, no cause ever accrued in his favor, and therefore, none survives in the heirs. *Dillon v. Great Northern Ry. Co.*, 38 Mont. 485, 503, 100 Pac. 960.

§ 5261.

Relationship of master and servant exists when, between railway company and freight conductor, though the latter's pay has, for the time being, ceased, where he is subject to the company's call. *Moyse v. Northern*

Pac. Ry. Co., 41 Mont. 272, 288, 108 Pac. 1062.

Editorial Notes.

Who is an "incompetent" servant, within the law of master and servant. *Ann. Cas.* 1912C, 96.

CARRIERS.

§ 5298.

Applied to obligation of carrier to one riding on a railroad pass. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 31, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

§ 5299.

This section and section 5300, post, distinctly recognize the fact that a carrier owes a different and higher duty to a person who is carried for reward than that owing to one who is carried without reward. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 29, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

One riding on a railway pass is not a passenger for reward, but a free passenger; the company is a carrier without reward, and is answerable to the passenger for ordinary negligence, without considering any exemption conditions of the pass. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 30, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

Editorial Notes.

Liability of carrier to passengers traveling on passes or contracts contrary to the provisions of the statute or Constitution. 32 L. R. A. (N. S.) 85.

Liability of carrier for injury to free passenger. *Ann. Cas.* 1914B, 1209.

§ 5300.

As between the owner or manager of exhibitions and places of amusement and the carrier of a passenger for hire, the same measure of duty is not demanded; only ordinary care, as in the gratuitous carriage of persons, under section 5299, ante, is required of the former, while the utmost care is required of the latter. *Phillips v. Butte Jockey Club etc. Assn.*, 46 Mont. 338, 347, 42 L. R. A. (N. S.) 1076, 127 Pac. 1011.

Ordinary care is the measure of duty which the law imposes upon the owners and managers of exhibitions and places of amusement, to prevent injury to patrons who have paid for the privileges accorded to them; thus, the owner of the grandstand at a racecourse is not answerable for an injury to a patron, caused by the latter's tripping on a nail and falling on a broken board, while he was descending the stairway, where the owner did not have notice, either actual or implied, of such defects. *Phillips v. Butte Jockey Club etc. Assn.*, 46 Mont. 338, 347, 42 L. R. A. (N. S.) 1076, 127 Pac. 1011.

Editorial Notes.

Liability of one maintaining place of amusement, to which public are invited, for safety of patrons. 42 L. R. A. (N. S.) 1070.

Liability of carriers for injuries to passengers. 43 Am. Dec. 355.

§ 5309.

This section is not meant for cases of actual, manual delivery; it applies simply to those cases where, by following custom, a delivery may be accomplished short of the actual, manual transfer of the goods. *Gary B. & G. Co. v. Chicago etc. Co.*, 49 Mont. 524, 532, 143 Pac. 955.

§ 5310.

This section does not define the acts that may constitute delivery, in the absence of custom. *Gary B. & G. Co. v. Chicago etc. Co.*, 49 Mont. 524, 532, 143 Pac. 955.

§ 5311.

This section does not apply if a personal delivery is claimed; and, if a personal delivery is not claimed, and this section does apply, its effect is not to relieve the carrier from all liability, but to change the liability from that of carrier to that of warehouseman. *Gary B. & G. Co. v. Chicago etc. Co.*, 49 Mont. 524, 532, 143 Pac. 955.

§ 5338.

This section and section 5339, post, construed together, give to the carrier the right, by special contract, to provide against liability in all cases except when it arises from his gross negligence, fraud, or willful wrong. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 35, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

Editorial Notes.

Power of carriers to limit their liability and how may be exercised. 32 Am. Dec. 435.

Notices contained in tickets and bills of lading. 15 Am. Rep. 457; 29 Am. Rep. 166; 5 Am. St. Rep. 719.

Stipulations exempting from liability when void. 31 Am. Rep. 567.

Agreements and stipulations which may not extort from shippers and their effect if extorted. 13 Am. St. Rep. 782; 46 Am. St. Rep. 777.

Special contracts, right to exact from shippers. 46 Am. St. Rep. 777.

Liability of carriers, limiting by bills of lading. 88 Am. St. Rep. 74.

§ 5339.

Construction of section. See note ante, § 5338.

§ 5340.

It is lawful for carrier and passenger to agree in writing to a modification of the carrier's obligation to respond in damages for the actual value of baggage lost. *Rose v. Northern Pac. Ry. Co.*, 35 Mont. 70, 78, 119 Am. St. Rep. 836, 88 Pac. 767.

A contract by railway company with a passenger, limiting the liability of the carrier to one hundred dollars for loss of baggage is valid. *Rose v. Northern Pac. Ry. Co.*, 35 Mont. 70, 78, 119 Am. St. Rep. 836, 88 Pac. 767.

§ 5344.

A contract made by a carrier with a passenger in the sale of a ticket, providing that in view of the reduced rate at which transportation is furnished, the carrier's liability for baggage shall be limited to one hundred dollars, is valid. *Rose v. Northern Pac. Ry. Co.*, 35 Mont. 70, 80, 119 Am. St. Rep. 836, 88 Pac. 767.

Editorial Notes.

Liability of carrier with respect to baggage of gratuitous passenger. Ann. Cas. 1912C, 629.

Liability of carrier for loss of or injury to hand-baggage. Ann. Cas. 1912D, 1156.

§ 5348.

A person who enters a train consisting wholly of Pullman cars, without paying Pullman car fare, in addition to the purchase of a regular first-class ticket, may, if he refuses to pay such fare, and if other trains have been provided for his carriage, be ejected, if done without unnecessary force; it is a passenger's duty to comply with all reasonable rules of the railway company. *Doherty v. Northern Pac. Ry. Co.*, 43 Mont. 294, 298, 304, 36 L. R. A. (N. S.) 1139, 115 Pac. 401.

Editorial Notes.

Right of carrier to run trains composed exclusively of sleeping or parlor cars. 36 L. R. A. (N. S.) 1139.

§ 5374.

Status of directors. See note ante, § 3889.

Editorial Notes.

Fiduciary relation of trustee and beneficiary. 16 Am. Dec. 616.

§ 5350.

One traveling on a second-class, limited, railroad ticket, without stopover privileges, may, if he does stop over, especially if he has a conductor's check, in place of his ticket, which informs him of his rights, be lawfully ejected from another train on which he takes passage, if he refuses to pay full fare. *Sanden v. Northern Pac. Ry. Co.*, 43 Mont. 209, 219, 34 L. R. A. (N. S.) 711, 115 Pac. 408.

Editorial Notes.

Right of passengers to act upon conductor's assurance that a stopover is allowed. 34 L. R. A. (N. S.) 711.

Liability of railroad company for negligence in ejecting trespasser from moving train. 13 L. R. A. (N. S.) 364.

Right of passenger to forcibly resist unlawful ejection. 125 Am. St. Rep. 727.

§ 5353.

In the absence of evidence that injury to livestock, while being transported on a railway, was caused by their bad temper, restiveness, viciousness, etc., instruction that the carrier is not liable for such injuries is properly refused. *Heitman v. Chicago etc. Ry. Co.*, 45 Mont. 406, 416, 123 Pac. 401.

§ 5354.

Degrees of negligence are recognized. See note ante, § 5244.

Effect of distinction between degrees of negligence. See note ante, § 5244.

If a common carrier receives property for transportation, when he knows, or, by the exercise of ordinary care, should know, that it is likely to be exposed to injury or loss because of inadequate facilities for its transportation, he is answerable for any loss following the acceptance of the property. *Wahle v. Great Northern Ry. Co.*, 41 Mont. 326, 334, 109 Pac. 713.

§ 5355.

Degrees of negligence are recognized. See note ante, § 5244.

Effect of distinction between degrees of negligence. See note ante, § 5244.

Exemptions do not apply, when. See ante, § 5354.

TRUSTS.**§ 5375.**

Guardian as a trustee. See note post, § 7777.

Fraud of broker upon principal. See note post, § 5380.

Guardian must account for interest, when. See note post, § 7771.

Good faith requires an agent employed to sell land to account to his principal for the entire selling price, less the agreed commission. *Middlefork Cattle Co. v. Todd*, 49 Mont. 259, 262, 141 Pac. 641.

It has been a recognized rule in equity, for a century or more, that a trustee shall not deal with the trust funds for any purpose not connected with the trust, and shall not profit by malversation of the trust fund. In *re Allard Guardianship*, 49 Mont. 219, 229, 141 Pac. 661.

§ 5376.

A guardian is a trustee, and is accountable as such. *Smith v. Smith*, 210 Fed. 947, 951.

What loaning of a ward's trust funds, by a guardian to himself, is not illegal and fraudulent. *Smith v. Smith*, 45 Mont. 535, 579, 125 Pac. 987.

If a guardian applies to the court for authority to borrow his ward's money, at a low rate of interest, without disclosing the fact that he has already used the ward's money in payment of his own debts; any order procured by such fraud and imposition is voidable, and will afford no protection to the guardian; he is, therefore, answerable, under such circumstances, for legal interest, both before and after obtaining such authority. *Smith v. Smith*, 210 Fed. 947, 951.

§ 5379.

Status of directors. See note ante, § 3889.

§ 5380.

Status of directors. See note ante, § 3889.

Guardian as a trustee. See note post, § 7777.

Good faith requires an agent employed to sell land to account to his principal for the entire selling price, less the agreed commission. *Middlefork Cattle Co. v. Todd*, 49 Mont. 259, 262, 141 Pac. 641.

It is a fraud for a guardian to use the ward's funds, entrusted to him, for any purpose not connected with the trust. In *re Allard Guardianship*, 49 Mont. 219, 228, 141 Pac. 661.

If a broker is employed to sell land at a certain price, on commission, and he finds a purchaser at that price, but induces his principal to sell at a lower figure, upon the representation that he cannot get any more, and the broker pockets the difference, it is a clear case of fraud upon his principal, and an action lies to compel him to disgorge the amount of profit so wrongfully realized. *Middlefork Cattle Co. v. Todd*, 49 Mont. 259, 262, 141 Pac. 669.

§ 5389.

If a trust is created to secure to the beneficiary an unpaid balance due him, he can take advantage of it at any time before its rescission. *Willoburn Ranch Co. v. Yegen*, 45 Mont. 254, 259, 122 Pac. 915.

AGENCY.

§ 5415.

Authority of agent to sell land must be in writing. See note post, § 7969.

A person who deals with a special agent is bound at his peril to ascertain the scope of the agent's authority. *Schaeffer v. Mutual Benefit Life Ins. Co.*, 38 Mont. 459, 465, 100 Pac. 225.

If a person, in negotiating for the purchase of land, deals with an agent whom he knows to be a special one, and makes a partial payment to him, which the agent has no right to receive, after which the deal falls through, the receipt of the agent for the money is not the receipt of the principal, and the payer cannot recover such payment from the principal. *Schaeffer v. Mutual Benefit Life Ins. Co.*, 38 Mont. 459, 466, 100 Pac. 225.

§ 5424.

When contract, to bind corporation, need not be expressed in writing. See note post, § 5449.

Editorial Notes.

Ratification of what contracts not possible. 59 Am. St. Rep. 638.

Ratification, effect of. 5 Am. St. Rep. 109.

Ratification of unauthorized written instrument, what amounts to. 27 Am. Dec. 343.

§ 5427.

County is without power to ratify treasurer's wrongful conversion of county moneys in a bank. See note ante, § 3003.

§ 5433.

A person who brings suit to recover money paid on a life insurance premium note, given before the rejecting of his application, must be charged with constructive notice of the restriction placed upon the authority of the insurance agent, where, by the use of reasonable diligence, such authority could have been ascertained. *Weidenaar v. New York Life Ins. Co.*, 36 Mont. 592, 616, 94 Pac. 1.

Editorial Notes.

Authority of traveling salesman to make binding contract of sale. Ann. Cas. 1912B, 356.

Authority of agent to warrant. Ann. Cas. 1913D, 473.

§ 5434.

Notice of insurance agent's authority.
See note ante, § 5433.

§ 5437.

Fraud of broker upon principal. See note ante, § 5380.

Obligation of trustees. See ante, §§ 5375 and 5380.

Common honesty denies to an agent the right to profit at the expense of his principal by chicane and misrepresentation. *Middlefork Cattle Co. v. Todd*, 49 Mont. 259, 262, 141 Pac. 641.

§ 5446.

Notice of insurance agent's authority.
See note ante, § 5433.

§ 5449.

Power of board of directors of corporation to delegate authority to executive officer. See note ante, § 3836.

When a corporation entrusts to its president the active management of its business, he may bind the corporation by contracts that are within the scope of the powers of the corporation, and that are necessary or proper or usually made in the conduct of its business; thus, where he makes a contract of employment and it is clear that his intention is to bind the corporation, it becomes bound as fully as if a formal contract were afterward executed in its name. *Edwards v. Plains L. & W. Co.*, 49 Mont. 535, 544, 143 Pac. 962.

§ 5460.

Where an agent had no interest in the subject matter of a contract of employment of indefinite duration, for the sale of real estate, and had not procured a purchaser ready, willing and able to buy, the agency was revocable at the will of the principal whether the agent consented or not. *Newman v. Dunleavy* (Mont.), 149 Pac. 970.

PARTNERSHIP.**§ 5466.**

Effect of taking property in names of two persons. See note post, § 5468.

To create the relation of copartners, it must be the intention of the parties to carry on some business and to share in the profits; community of interest alone is not enough. *Croft v. Bain*, 49 Mont. 484, 487, 143 Pac. 960.

The interchangeable relation of principal and agent is indispensably necessary to constitute a copartnership. *Croft v. Bain*, 49 Mont. 484, 488, 143 Pac. 960.

To constitute a partnership, there must be such a community of interest as empowers each party to make contracts, incur liabilities, and dispose of the property. *Weiss v. Hamilton*, 40 Mont. 99, 106, 105 Pac. 74.

It is essential to a partnership that there be a community of ownership in the profits. *Weiss v. Hamilton*, 40 Mont. 99, 106, 105 Pac. 74.

The sharing of profits is not a conclusive test of partnership. *Weiss v. Hamilton*, 40 Mont. 99, 106, 105 Pac. 74.

Editorial Notes.

Proof of partnership by general reputation. 38 Am. Dec. 481; 4 Ann. Cas. 817.

Participation in profits, when does and when does not create partnership. 49 Am. Rep. 255; 58 Am. Rep. 99; 30 Am. St. Rep. 828; 18 L. R. A. (N. S.) 963.

Existence of partnership, what agreements establish. 43 Am. St. Rep. 229.

What constitutes partnership. 115 Am. St. Rep. 400.

Agreement to share losses as essential to existence of partnership relation. Ann. Cas. 1913B, 1335.

§ 5468.

Essentials of partnership. See note ante, § 5466.

Profits as assets. See note post, § 5485.

The fact that property is taken in the names of two persons is not of any particular significance, as to the existence of a partnership, where neither party assumes to have any authority to dispose of such property, and, upon a sale thereof, each party disposes of his interest in the proceeds of the sale as he sees fit. *Weiss v. Hamilton*, 40 Mont. 99, 107, 105 Pac. 74.

A check received by a partner, for work done by the copartnership, is partnership property. *First Nat. Bank v. Silver*, 45 Mont. 231, 236, 122 Pac. 584.

Money received by copartners upon a note signed by them is partnership property. *First Nat. Bank v. Silver*, 45 Mont. 231, 236, 122 Pac. 584.

§ 5469.

Essentials of partnership. See note ante, § 5466.

Larceny by partner. See note post, § 8642.

Profits as assets. See note post, § 5489.

§ 5472.

A surviving partner, having a right to the possession of partnership property,

may maintain an action for its recovery, where a third person has converted it. *First Nat. Bank v. Silver*, 45 Mont. 231, 237, 122 Pac. 584.

§ 5475.

Where two physicians are partners and use a hospital for the purpose of treating patients, and one of them, anticipating the dissolution of the relation, though brought about through his own acts, solicits the patronage of firm patients after that event shall have taken place, a court of law will not undertake to adjust the niceties of the situation, and measure out compensation, under this section, supplemented by sections 6040 and 6047, post, to the one who claims to have been injured by a dissolution of the firm. *Freund v. Murray*, 39 Mont. 539, 553, 25 L. R. A. (N. S.) 959, 104 Pac. 683.

§ 5482.

Essentials of partnership. See note ante, § 5466.

Where a firm has a right to have property conveyed to it, and there is no stipulation in the agreement or contract to the contrary, that right is assignable; and, subject to the provisions of section 5483, post, a partner's assignment of such right, for a valuable consideration, is valid. *Milwaukee Land Co. v. Ruesink*, 50 Mont. 489, 148 Pac. 396.

Editorial Notes.

Power of one partner to authorize an appearance for the firm. 13 Am. Dec. 726.

Partnership, accommodation paper, power of one partner to bind the firm by. 31 Am. St. Rep. 754.

Power of one member to obtain loan on credit of the firm. 48 Am. St. Rep. 438.

Judgment against partnership on service of process on one member only. 44 Am. Dec. 570.

Power of one partner to limit the authority of another. 88 Am. St. Rep. 322.

Liability of partnership on note executed in name of single partner. Ann. Cas. 1912A, 618.

§ 5483.

Partner's power to assign. See note ante, § 5482.

§ 5485.

The profits of a partnership, carried on by surviving partners, are partnership assets; but, until a settlement of the partnership affairs is had, neither of the surviving partners nor the administrator of the deceased partner can assert a right to

any particular portion of the firm property. *Boehme v. Fitzgerald*, 43 Mont. 226, 229, 115 Pac. 413.

§ 5489.

Is a partner severally liable for services rendered the firm? *Carlson v. Barker*, 36 Mont. 486, 492, 93 Pac. 646.

A note signed by copartners is a copartnership obligation. *First Nat. Bank v. Silver*, 45 Mont. 231, 236, 122 Pac. 584.

§ 5494.

Death does not dissolve mining partnership. See note post, § 5540.

A general, trading partnership is dissolved by the death of a partner. *Boehme v. Fitzgerald*, 43 Mont. 226, 227, 115 Pac. 413.

If the duration of a general partnership is not fixed by agreement, a member of such partnership may dissolve it at any time. *Freund v. Murray*, 39 Mont. 539, 544, 25 L. R. A. (N. S.) 959, 104 Pac. 683.

If an agreement for the dissolution of a partnership contains two provisions, which are fundamentally inconsistent with each other, so that neither mode can be enforced, an adjustment between the partners should be reached in the ordinary way, without regard to the agreement. *Lenahan v. Casey*, 46 Mont. 367, 377, 128 Pac. 601.

While the death of one of two partners dissolves the partnership, it does not affect the partnership property, except to give the surviving partner exclusive control of the property, for the purpose of settling up the partnership business, as provided for in section 7607, post. *First Nat. Bank v. Silver*, 45 Mont. 231, 236, 122 Pac. 584.

Editorial Notes.

Arbitrary or mala fide termination of partnership as basis of action in tort. 25 L. R. A. (N. S.) 959.

Dissolution of partnership by a decree. 98 Am. Dec. 260.

Dissolution of partnership, causes sufficient for. 69 Am. St. Rep. 410.

Dissolution of partnership on account of mental or physical incapacity of partner. Ann. Cas. 1913D, 1148.

§ 5501.

Partner's power to assign. See note ante, § 5482.

§ 5502.

Partner's power to assign. See note ante, § 5482.

§ 5504.

Penalty for failure to file certificate. See note post, § 5505.

The name "McLaughlin Bros." does not come within this section; it cannot be said, as a matter of law, that such name is a designation not showing the names of the persons interested as partners. *Vaughan v. Kujath*, 44 Mont. 484, 486, 120 Pac. 1121.

§ 5505.

Sufficiency of designation. See note ante, § 5504.

This section and section 5509, post, simply suspend the right of action until the statute is complied with. *Reilly v. Hathe-way*, 46 Mont. 1, 11, 125 Pac. 417.

It is not the right to begin an action, but the right to maintain it, that is withheld by the statute for a failure to comply with its terms; if, before the defense is interposed, the plaintiff complies with the statutory provision, the action may be maintained; and such defense, being an affirmative one, is waived unless it is pleaded in the answer. *Reilly v. Hathe-way*, 46 Mont. 1, 11, 125 Pac. 417.

The penalty imposed for a violation of this and the next preceding section is the incapacity to sue; but a suit involving a partnership claim may be properly instituted in the names of the persons composing the partnership; and if the fact that the plaintiffs are copartners does not appear from the face of the complaint, and the question of their legal incapacity to sue is not raised by answer, under section 6534, post, the objection must, under section 6539, post, be deemed to have been waived; assuming, then, that the plaintiffs were doing business under a fictitious name, it was not error for the court to exclude evidence showing that they had never made and filed the certificate required by this and the next preceding section. *Wilson v. Yegen Bros.*, 38 Mont. 504, 506, 509, 100 Pac. 613.

The disability imposed by this section, for a failure to comply with section 5504, ante, cannot avail a defendant, sued by the copartners conducting a business under a fictitious name, except upon affirmative allegation and proof; it is in the na-

ture of matter in abatement; the inhibition does not destroy the right of action upon which recovery is sought, but merely imposes a disability to maintain the action until there has been a compliance with section 5504, ante. *Croft v. Bain*, 49 Mont. 484, 489, 143 Pac. 960.

§ 5509.

Construction of section. See note ante, § 5505.

Right of action and defense. See note ante, § 5505.

A person who, in a single isolated instance, signs a contract with a fictitious name, is not "transacting" or "doing" business within the inhibition of this section, and may invoke the aid of a court to enforce his claim. *Keffler v. Wilds*, 50 Mont. 387, 146 Pac. 1103.

§ 5535.

Applied in *Eisenberg v. Goldsmith*, 42 Mont. 563, 577, 113 Pac. 1127.

Editorial Notes.

Mining partnerships. 83 Am. Dec. 104.

Partnership in mines, relations of the partners. 28 Am. St. Rep. 488.

§ 5536.

Applied in *Eisenberg v. Goldsmith*, 42 Mont. 563, 577, 113 Pac. 1127.

§ 5540.

A mining partnership is not dissolved by the death of a partner; his estate succeeds to his interest, and occupies the same relative position that he would occupy, if alive. *Boehme v. Fitzgerald*, 43 Mont. 226, 227, 115 Pac. 413.

§ 5544.

Those who own a majority interest in a mining partnership are entitled to the management and control. *Boehme v. Fitzgerald*, 43 Mont. 226, 227, 115 Pac. 413.

INSURANCE.

§ 5570.

Burden of proving fraud, in action in life insurance policy. See note post, § 7972.

If the insured intentionally conceals facts that are material, or makes false representations with reference to them, intending to mislead the insurer, he is guilty of actual fraud, which, at the option of the latter, avoids the policy. *Pelican v. Mutual Life Ins. Co.*, 44 Mont. 277, 288, 119 Pac. 778.

Editorial Notes.

Concealment and misrepresentations, when avoid. 35 Am. Rep. 629.

§ 5628.

This section applies to policies of life and accident insurance as well as to those of fire insurance. *Da Rin v. Casualty Co.*, 41 Mont. 175, 186, 137 Am. St. Rep. 709, 27 L. R. A. (N. S.) 1164, 108 Pac. 649.

Proof of death, in whatever form it may be furnished, is sufficient if it gives, substantially, the information stipulated for; it need not be of that character which falls within the range of judicial evidence, as defined in section 7844, post; the formality of being sworn to is not required. *Da Rin v. Casualty Co.*, 41 Mont. 175, 186,

137 Am. St. Rep. 709, 27 L. R. A. (N. S.) 1164, 108 Pac. 649.

Editorial Notes.

Proofs of death in cases of accident and life insurance. 137 Am. St. Rep. 718.

§ 5630.

More explicit proof of death is waived by not objecting to that furnished. *Da Rin v. Casualty Co.*, 41 Mont. 175, 187, 137 Am. St. Rep. 709, 27 L. R. A. (N. S.) 1164, 108 Pac. 649.

GUARANTY.

§ 5653.

Liability of employer for wrongful death. See note post, § 6486.

Liability of indemnitor. See note post, § 6486.

Provisions similar to existing laws, how construed. See post, § 6215.

This section, while plainly susceptible of various constructions, must be accepted as a declaration only of the common law. *Northam v. Casualty Co.*, 177 Fed. 981, 984.

This section is simply declaratory of the common law and has no application to a case in which one company has contracted to indemnify another employing company for damages to its employees; one of the companies, if answerable at all, is liable for contract; the other for a tort. *Cummings v. Reins Copper Co.*, 40 Mont. 599, 620, 107 Pac. 904.

The import of this section is, that the indemnitor gives a bond, in consideration of which the indemnitee agrees to or is induced to act, or refrain from acting, to

Editorial Notes.

Proofs of death in cases of accident and life insurance. 137 Am. St. Rep. 718.

Furnishing proofs of loss within prescribed time as condition precedent to recovery on fire insurance policy. *Ann. Cas.* 1912C, 604.

§ 5647.

Contracts of insurance, how construed. See note ante, § 5025.

the injury of a third person. *Northam v. Casualty Co.*, 177 Fed. 981, 984.

Editorial Notes.

Judgments against principals, conclusiveness against indemnitors. 22 Am. St. Rep. 204.

§ 5660.

Where, upon the winding up of a partnership, one of the members who retains firm funds agrees to pay a debt due from the partnership for wages, his promise is valid though not in writing. *Carlson v. Barker*, 36 Mont. 492, 93 Pac. 646.

§ 5673.

Release of surety on bond for payment of rent. See note post, § 5686

Editorial Notes.

Contract of guaranty. 105 Am. St. Rep. 502.

§ 5674.

Release of surety on bond for payment of rent. See note post, § 5686.

SURETYSHIP.

§ 5682.

The sureties on the bond of a county assessor conditioned that he should "well, truly and faithfully perform all official duties now required of him by law, and . . . all of the duties of county assessor required by any law to be enacted subsequent to the execution of this bond," are not liable for moneys improperly paid to the assessor as compensation for the collection of city taxes, since the collection of said taxes was not imposed upon him by any law. *City of Butte v. Bennett (Mont.)*, 149 Pac. 92.

§ 5686.

Though a landlord promises, without consideration, to reduce the rent and to permit his tenant to pay at irregular intervals, contrary to the terms of the lease,

the sureties on the bond to secure the payment of the rent are not released from liability, under this section, in the absence of any showing that they were injured or prejudiced by the act of the lessor; nor are the sureties released, under sections 5673 and 5674, ante; the obligation of the principal in such a case, is not changed within the meaning of section 5673, as the lessor's promises, within view of section 5674, are void as to him, because they were made without consideration. *Dodd v. Vucovich*, 38 Mont. 188, 193, 99 Pac. 296.

Editorial Notes.

Release of surety by indulgence of principal. 30 Am. Dec. 257.

Release of principal, when may not relieve surety. 73 Am. Dec. 297.

Release of surety, what operates as.
28 Am. St. Rep. 691.

Amendment of claim or pleading as
discharge of sureties on bonds given
to dissolve attachments or on bail
bonds in civil actions. 42 L. R. A.
(N. S.) 484.

Release of surety in case of compen-
sation agreement with creditors.
Ann. Cas. 1914A, 836.

Extension of time to principal with
express reservation of rights against
surety as discharging surety. Ann.
Cas. 1914B, 1080.

Failure of creditor to perform promise
made in consideration of receipt of
security from debtor for existing
debt, as bar to action against
surety. Ann. Cas. 1912A, 415.

LIENS.

§ 5709.

Suit to redeem. See note post, § 6504.

§ 5713a. Lien upon Crops for Purchase Price of Seed.

(Section 1.) Any person who shall furnish to another seed to be sown or planted or to be used in the production or cultivation of a crop or crops on the lands owned or contracted to be purchased, used, occupied, or rented by him, or held under government entry, shall upon filing the statement provided for in the next section, have a lien not exceeding the purchase price of seven hundred bushels upon the crop produced from the seed or grain so furnished, or any part thereof, and upon the seed or grain threshed from such crop, to secure the payment of the purchase price thereof.

(Section 2.) Any person entitled to a lien under this act shall, within thirty days after the seed or grain is furnished, file in the office of the county clerk and recorder of the county in which the seed or grain is to be sown or planted or used, a statement in writing, verified under oath, showing the kind and quantity of seed or grain, its value, the name of the person or persons to whom furnished, and a description of the land and of each tract of land upon which the same is to be, or has been planted or sown, or used in the production of a crop or crops. Unless the person entitled to the lien shall file such statement within the time aforesaid, he shall be deemed to have waived his right thereto.

(Section 3.) The lien given by this act shall, as to the crops covered thereby have priority over all other liens and encumbrances thereon.

(Section 4.) All acts and parts of acts in conflict herewith are hereby repealed. [Approved February 19, 1915; Laws 1915, c. 23, p. 32.]

§ 5713b. Lien of Threshermen upon Grain or Crops.

(Section 1.) All threshermen owning or operating threshing machines shall have a lien upon the grain and other crops threshed by them for and on account of the services rendered and labor performed by them on said grain and crops.

(Section 2.) Every person intending to avail himself of the benefits of this act must file with the county clerk of the county in which said grain or other crops were grown, and if grown in more than one county, then with the county clerk of each county in which they were grown, within ten (10) days after the last services were rendered or labor performed in the threshing of said grain or other crops, a just and true account of the amount due him or them for such services or labor, after allowing all just credits and offsets, and containing a correct description of the grain or other crop to be charged with such lien, the price agreed upon for such threshing, the name of the person, firm or corporation for whom such labor and services were performed, and a description of the land as nearly as possible upon

which such grain or other crops were raised and a description of the legal subdivision of land upon which said grain is stored; and if said grain is stored in an elevator, the location of said elevator; which statement or account shall be verified by affidavit of the person claiming such lien or his duly authorized agent or attorney having knowledge of the facts; and any error or mistake in the account or description of the grain or other crops or of the property upon which it was raised shall not invalidate said lien. If the grain or other crops so threshed are being hauled from the machine direct to the elevator or to any other purchaser, then the threshermen desiring to claim such lien shall also serve written notice upon the elevator man or other private purchaser that he will claim or hold a lien upon said grain or other crops for his services or labor performed in threshing the same.

(Section 3.) The county clerk must indorse upon such lien the day of its filing, make an abstract thereof in a book kept by him for that purpose and properly indexed, containing the date of the filing, the name of the person claiming the lien, the amount thereof, the name of the person against whose property the lien is filed, and a description of the property to be charged with the same.

(Section 4.) The lien for work or labor done or services rendered as specified in section 1 of this act shall be prior to and have precedence over any mortgage, encumbrance or other lien upon said grain or other crops, except the lien for the seed furnished for the purpose of growing this particular crop.

(Section 5.) All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within sixty (60) days from the filing of the lien.

(Section 6.) Except as otherwise provided, the provisions of Part II of the Revised Codes of 1907 are applicable to and constitute the rules of practice for the enforcement and foreclosure of the lien herein provided for.

(Section 7.) All persons interested in the matter in controversy or the property to be charged with the lien, or having liens thereon, may be made parties to an action for the foreclosure thereof.

(Section 8.) Every person, including guardians or minors, married women and any company, firm, association or corporation for whose use or benefit the grain or other crops mentioned herein are threshed or the services rendered or labor performed, is deemed the owner thereof for the purposes herein mentioned.

(Section 9.) Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof as in case of a mortgage, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, he is liable to any person injured thereby in the amount of such injury and the costs of action.

(Section 10.) All acts and parts of acts in conflict herewith are hereby repealed. [Approved February 20, 1915; Laws 1915, c. 25, p. 33.]

§ 5714.

A chattel mortgage only creates a lien and does not pass title from the mortgagor to the mortgagee. *Demers v. Graham*, 36 Mont. 402, 404, 122 Am. St. Rep. 384, 13 Ann. Cas. 97, 14 L. R. A. (N. S.) 431, 93 Pac. 268.

A chattel mortgage upon cows, in which no mention is made of their increase, does not cover their calves in gestation at the time of the execution of the mortgage and born prior to foreclosure. *Demers v. Graham*, 36 Mont. 402, 404, 122 Am. St. Rep. 384, 13 Ann. Cas. 97, 14 L. R. A. (N. S.) 431, 93 Pac. 268.

§ 5715.

Inapplicability of section where vendor retains legal title. See note post, § 6039.

§ 5723.

Suit to redeem. See note post, § 6504.

§ 5727.

It seems that the lien of a mortgage on

property is not extinguished by the mortgagor's sale thereof to the mortgagee, unless the sale was made for that purpose and the conveyance discloses such fact; the same must be "in satisfaction of the claim secured" by the lien. *Dubbels v. Thompson*, 49 Mont. 550, 555, 143 Pac. 986.

MORTGAGES.

§ 5731.

Pledge, what is. See post, § 5774.

Sale, what constitutes. See ante, § 5079.

In determining whether a transaction, whereby security was given for the payment of money, was a deed, mortgage, pledge or sale of property, the same rules apply. *Murray v. Butte-Monitor T. M. Co.*, 41 Mont. 449, 462, 110 Pac. 497.

Whether a transaction, by which personal property is given as security, is a pledge, or a sale, mortgage or absolute assignment, the law favors the conclusion that it is a pledge. *Murray v. Butte-Monitor T. M. Co.*, 41 Mont. 449, 463, 110 Pac. 497.

Where property is sold under a contract providing that title shall remain in the seller until the purchase price is paid, the seller does not have a mortgage or lien upon the property within the attachment statute (Rev. Codes § 6656). *State ex rel. Malin-Yates Co. v. Justice of Peace Court*, (Mont.), 149 Pac. 709.

Editorial Notes.

Deeds absolute in form with agreements to reconvey. 17 Am. Dec. 300.

Deed absolute on face intended as mortgage. 11 L. R. A. (N. S.) 209; 22 L. R. A. (N. S.) 572.

Equitable mortgages, what constitute. 4 Am. St. Rep. 696.

Distinction between trust deed and power of sale mortgage of realty. Ann. Cas. 1913A, 1045.

§ 5736.

Sale to satisfy debt. See note post, § 6861.

§ 5756a. Period of Lien of Mortgage—Extension.

(Section 1.) Every mortgage of real property made, acknowledged and recorded, as provided by the laws of this state, is thereupon good and valid as against the creditors of the mortgagor or owner of the land mortgaged, or subsequent purchasers or encumbrancers, from the time it is so recorded until eight years after the maturity of the entire debt or obligation secured thereby and no longer, unless the mortgagee, his heirs, executors, administrators, representatives, successors, or assigns, shall within sixty days after the expiration of said eight years file in the office of the

A chattel mortgage upon cows, in which no mention is made of their increase, does not cover their calves in gestation at the time of the execution of the mortgage and born prior to foreclosure. *Demers v. Graham*, 36 Mont. 402, 408, 122 Am. St. Rep. 384, 13 Ann. Cas. 97, 14 L. R. A. (N. S.) 431, 93 Pac. 268.

§ 5742.

Sale to satisfy debt. See note post, § 6861.

A mortgagee may execute a power of sale, conferred by chattel mortgage; it is not necessary for him to call upon the sheriff to make the sale, nor to proceed by an action to foreclose; the provision in section 5769, post, for calling upon the sheriff to execute the power of sale, does not confer exclusive power upon such officer. *Kinsman v. Stanhope*, 50 Mont. 41, 144 Pac. 768.

§ 5749.

See § 5756a, post.

Editorial Notes.

Distinction between trust deed and power of sale mortgage of realty. Ann. Cas. 1913A, 1045.

§ 5752.

Satisfaction of mortgage by sale. See note ante, § 5727.

See § 5756a, post.

§ 5753.

Satisfaction of mortgage by sale. See note ante, § 5727.

county clerk and recorder where said mortgage is recorded, an affidavit, setting forth the date of said mortgage, when and where recorded, the amount of the debt secured thereby, and the amount remaining unpaid, and that the said mortgage is not renewed for the purpose of hindering, delaying or defrauding creditors of the mortgagor or owner of the land, and upon the filing of said affidavit, the said mortgage shall be valid against all persons for a further period of eight years; provided, however, that any mortgage now of record as to which eight or more years from the maturity thereof have elapsed may be renewed at any time within six months from the date of the approval of this act, by filing within said time the aforesaid affidavit with the county clerk of the county wherein such mortgage may be recorded. [Approved February 17, 1913; Laws 1913, c. 27, p. 27.]

CHATTEL MORTGAGES.

§ 5757. Property Subject to Chattel Mortgage.

(Section 1.) Any interest in personal property which is capable of being transferred may be mortgaged. [Amendment approved March 14, 1913; Laws 1913, p. 378.]

The provisions governing the mortgaging of personal property, sections 5757-5773, are for the protection of creditors, and subsequent purchasers, and encumbrancers in good faith for value. *Rairden v. Hedrick*, 46 Mont. 510, 514, 129 Pac. 498.

A bill of sale absolute on its face, may be in fact a chattel mortgage. *Rairden v. Hedrick*, 46 Mont. 510, 514, 129 Pac. 498.

A bill of sale with an agreement to repurchase, may amount to a chattel mortgage or to a conditional sale, depending upon the surrounding circumstances, including the intention of the parties. *Rairden v. Hedrick*, 46 Mont. 510, 514, 129 Pac. 498.

Whether a transaction was intended as a sale, or merely as security for a loan, is a question of fact, and is properly submitted to the jury. *Rairden v. Hedrick*, 46 Mont. 510, 516, 129 Pac. 498.

§ 5758. Execution of Chattel Mortgage.

(Section 2.) A mortgage of personal property must be signed by the mortgagor, and be acknowledged by the mortgagor before some officer qualified to take acknowledgments; and every such mortgage must have attached thereto the affidavit of the mortgagee, his agent, attorney, or other representative, that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay or defraud creditors; and where there are two or more mortgagees named in a mortgage, whether copartners or otherwise, any one of said mortgagees may make such affidavit on behalf of all the mortgagees named therein. No further proof or formality of the execution of said mortgage is required to admit it to be filed. [Amendment approved March 14, 1913; Laws 1913, p. 378.]

Editorial Notes.

Execution of mortgage, manner and essentials of. 137 Am. St. Rep. 471.

§ 5759. Mortgage by Partnership or Corporation.

(Section 3.) Subject to the provisions of the preceding section, one member of a firm of general partners may alone execute a mortgage of personal property on behalf of the firm, to secure all existing indebtedness of the firm, and a mortgage so executed is as valid as though executed and made by all the partners. In case of a corporation, the president, vice-president, secretary, assistant secretary, cashier, or general manager

thereof may execute the mortgage, or make the affidavit of good faith aforesaid where the corporation is the mortgagee. [Amendment approved March 14, 1913; Laws 1913, p. 378.]

§ 5760. Acknowledgment and Registration of Mortgage.

(Section 4.) Every mortgage of personal property, together with the affidavit hereinbefore mentioned, or a copy thereof certified to be correct by the officer before whom the same was acknowledged or verified, or by the county clerk and recorder with whom it is filed, must be filed in the office of the county clerk and recorder of the county where the property was situated at the time of the execution of the mortgage, and the county clerk and recorder must, on receipt of such mortgage or certified copy, indorse thereon the time of receiving the same, and file and keep the same in his office for the inspection of all persons, and shall enter in a book properly ruled and kept for that purpose, the names of all parties, the names of the mortgagees alphabetically arranged, the consideration thereof, and the date of the maturity and the filing of the same. [Amendment approved March 14, 1913; Laws 1913, p. 378.]

§ 5761. Duration of Lien of Mortgage.

(Section 5.) A mortgage of personal property executed and filed as hereinbefore provided, ceases to be valid as against creditors of the mortgagor and subsequent purchasers or encumbrancers in good faith after the expiration of two years and sixty days from the filing thereof, except as hereinafter provided. [Amendment approved March 14, 1913; Laws 1913, p. 378.]

Editorial Notes.

Lien of chattel mortgage on growing crops, whether continues after the severance. 18 Am. St. Rep. 770.

§ 5762. Renewal of Chattel Mortgage.

(Section 6.) Every mortgage of personal property, executed and filed as provided by the laws of this state, may be renewed at any time within sixty days after the expiration of two years from the date of filing the same, in case such debt or obligation, or any part thereof, be unpaid or unfulfilled, by the filing of an affidavit showing the date of such mortgage, the names of the mortgagor and mortgagee, the date of filing the same and the amount of the debt justly owing at the date of the making of such affidavit, or the condition of the obligation then unfulfilled, and that such mortgage was neither made nor renewed to hinder, delay or defraud creditors or subsequent mortgagees of the said mortgagor and mortgagee, the date of filing the same, and by the mortgagee or his assignee, or other successor in interest; or if more than one mortgagee, assignee or successor in interest such affidavit may be made by one of them in behalf of all. In case of the absence of the mortgagee or his assignee from the county where such mortgage is filed, the affidavit may be made by the agent or attorney or other representative of the mortgagee or his assignee, or of his successor in interest. The affidavit may be made in behalf of the corporation by the president, vice-president, secretary, assistant secretary, cashier or general manager, and in case no such officer is within the county where the mortgages filed then by the agent, attorney or other representative of such corporation; provided that nothing

shall be so construed as to prevent the mortgagee or his assignee or successor in interest or one of them, where there is more than one, from making such affidavit wherever he may be, whether in or out of the county where the mortgage is filed so long as said affidavit is filed as hereinbefore specified. The affidavit must be filed in the office where the mortgage therein described is filed, and thereupon the county clerk of such county must attach such affidavit to the mortgage therein described, and note the date of filing thereof opposite the entry of the mortgage therein described in the book provided by law for the entry of chattel mortgages, and the original mortgage shall then continue in full force and effect for the period of three years from the date of filing said affidavit. [Amendment approved March 14, 1913; Laws 1913, p. 379.]

§ 5763. Effect of Filing Affidavit on Renewal.

(Section 7.) The filing of the affidavit, provided for in the next preceding section, shall not be construed to extend the time of the maturity of any debt or the execution of an obligation secured by such mortgage, but the same may be enforced, according to the conditions thereof, and such mortgage foreclosed according to law at any time within the period for which such mortgage is so renewed, unless agreement be made between the mortgagor and mortgagee extending the time of payment of such debt or fulfillment of such obligation, in which case the mortgage may be foreclosed at any time after the expiration of the time fixed by such agreement within the time limited by law for the foreclosure of mortgages. [Amendment approved March 14, 1913; Laws 1913, p. 380.]

§ 5764. Rights of Subsequent Mortgagee—Subrogation.

(Section 8.) Any mortgagee of personal property upon which a prior mortgage exists, may, at any time during the existence of such mortgage, pay the amount of the debt and interest owing and secured thereby, or deposit the full amount thereof with the county clerk of the county within which affidavit and mortgage are filed, subject to the order of the mortgagee, his legal representative or assigns, and the receipt or duplicate receipt for such payment or deposit, shall be filed in said office and attached to such mortgage, and thereby such subsequent mortgagee shall be subrogated to all the rights of the prior mortgagee under such mortgage. [Amendment approved March 14, 1913; Laws 1913, p. 380.]

§ 5765. Attachment of Mortgaged Chattels.

(Section 9.) Personal property mortgaged may be taken on attachment or execution issued at the suit of a creditor of the mortgagor; but before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit with the county treasurer of the county in which the mortgage is filed, payable to the order of the mortgagee; and when the property then taken is sold under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and
2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases. The holder of any chattel mortgage of record shall, upon fifteen (15) days' notice in writing served upon him in person by any creditor of the mortgagor seeking to satisfy a judgment or demand of such creditor against the mortgagor, be required to make

and file in the office of the county clerk and recorder of the county in which the property is situated or in which the mortgage is filed, an affidavit showing the amount of the indebtedness then actually due and owing to the mortgagee, and such affidavit shall state the amount of the original obligation for which the chattel mortgage was given as security, and all additional advancements of money or property on the principal obligation since the date of the execution of the mortgage, and all payments of whatsoever kind, whether on principal or interest, made by the mortgagor to the date of the execution of such affidavit by the mortgagee, and showing the balance then remaining due and unpaid to the mortgagee. If within fifteen (15) days from the service of any such demand in writing on the mortgagee by any creditor of the mortgagor the mortgagee shall fail, refuse, or neglect to file the affidavit herein required, the mortgage shall be of no force or effect as against such creditor upon the seizure of any such personal property on attachment or execution. In the event the amount shown to be due is paid to the county treasurer, or to the mortgagee, in satisfaction of the mortgage by any attaching or execution creditor against the mortgagor, the mortgagee shall be required to surrender to the county treasurer the note or other evidence of indebtedness, secured by the chattel mortgage, and pay any amount of tax due the state or county thereon at such time which said note or other evidence of indebtedness shall be delivered by the mortgagee or county treasurer to the attaching or execution creditor. In the event the property is sold on execution, such attaching creditor shall be required to deliver to the mortgagor the note or other evidence of indebtedness by him obtained from the mortgagee when the property is sold for the amount of the mortgage indebtedness, or an amount in excess thereof. [Amendment approved March 8, 1915; Laws 1915, c. 94, p. 160. Prior amendment: See Laws 1913, p. 380.]

§ 5766. Certified Copy of Mortgage.

(Section 10.) A copy of any mortgage of personal property made, acknowledged and filed as provided in this article, certified by the county clerk in whose office the same shall be filed, may be read in evidence in any court of this state, without further proof of the execution of the original, if said original be lost, or out of the power of the person wishing to use it. [Amendment approved March 14, 1913; Laws 1913, p. 381.]

§ 5767. Instruments to Which Law Applicable.

(Section 11.) The provisions of the foregoing sections of this article shall extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property, as shall have the effect of a mortgage or lien upon such property. [Amendment approved March 14, 1913; Laws 1913, p. 381.]

§ 5768. Foreclosure.

(Section 12.) An action for the foreclosure of a mortgage of personal property, or the enforcement of any lien thereon, of whatever nature, may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property mortgaged; but it is lawful for the mortgagor of personal property

to insert in his mortgage a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, to execute the power of sale therein granted to the mortgagee, his legal representatives and assigns, in which case the sheriff of such county, at the time of default, at the request of the mortgagee, must, and it is hereby made his duty to advertise and sell the whole or any part of the mortgaged property, wherever it may be, in the manner provided in such mortgage; and at such sale made as aforesaid, the mortgagee, or his representative or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff may require an indemnity bond from the mortgagee or his assigns before taking possession of, or selling the mortgaged property. Notice of sale shall be given by posting five notices in five public places in the county wherein the property is to be sold, one of which shall be posted at the designated place of sale. [Amendment approved March 14, 1913; Laws 1913, p. 381.]

Editorial Notes.

Right of mortgagee to purchase property at sale under chattel mortgage. Ann. Cas. 1913D, 412.

§ 5769. Sales—Commencement and Postponement.

(Section 13.) All sales made under the provisions of this act shall be commenced between the hours of 12 noon, and 4 o'clock of the afternoon of the day specified in the notice and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the mortgagor. [Amendment approved March 14, 1913; Laws 1913, p. 382.]

§ 5770. Report of Sale.

(Section 14.) Within ten days after the sale of any mortgaged property, as herein provided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, with the statement that the same was posted as herein provided, and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder where the mortgage is filed; which report shall be received in all courts as prima facie evidence of the facts therein stated. The county clerk and recorder shall properly index said report and attach the report of sale to the original mortgage on file. [Amendment approved March 14, 1913; Laws 1913, p. 382.]

§ 5771. Satisfaction of Mortgage.

(Section 15.) Whenever the debt or obligation secured by any mortgage of personal property, which has been filed in the office of the county clerk, as provided in this article, shall be paid or discharged, an acknowledgment of satisfaction, signed by the mortgagee, his legal representative or assigns, must be indorsed upon the mortgage, or copy thereof, or attached thereto, filed as aforesaid, and the fact of such discharge or

satisfaction noted by the county clerk in the book kept by him, as provided by this act, opposite the names of the parties to such mortgage. [Amendment approved March 14, 1913; Laws 1913, p. 382.]

This section was enacted to facilitate dealing in grain; the mortgagee is protected by the provision that the lien shall continue after severance; but the moment he allows the grain to be taken from the land where it was grown, he thereby removes the principal means of identification, and the property is *prima facie* free of encumbrance. *Brande v. Babcock Hardware Co.*, 35 Mont. 256, 261, 119 Am. St. Rep. 858, 88 Pac. 949.

Where grain has been removed from the land of the mortgagor, the mere fact that the buyer has knowledge that it was once mortgaged is not alone sufficient to prevent his being a bona fide purchaser; he has a right to presume that the lien has been extinguished; and, unless he has in some way estopped himself, he may safely purchase. *Brande v. Babcock Hardware Co.*, 35 Mont. 256, 262, 119 Am. St. Rep. 858, 88 Pac. 949.

§ 5772. Mortgage on Growing Crops.

(Section 16.) A mortgage may be given upon a growing crop, or a crop to be grown, and the lien thereon continues after severance whether remaining in its original state or threshed or otherwise prepared for market; provided, however, that the lien of such mortgage shall attach only to crops next maturing after the execution of such mortgage, except in case of mortgages to secure the purchase price of rental of land upon which such crops are to be grown. [Amendment approved March 14, 1913; Laws 1913, p. 382.]

Editorial Notes.

Lien of chattel mortgage on growing crops, whether continues after the severance. 18 Am. St. Rep. 770.

§ 5773. Removal of Mortgaged Chattel from County—Penalty.

(Section 17.) Any person who has executed a mortgage upon personal property, except locomotives, engines, rolling stock of a railroad, steamboat machinery and vessels in actual use, who shall, during the existence of the lien or title created by such mortgage, remove the same from the county where said property was situated at the time of the execution of the mortgage, or in case of a mortgaged crop, from the land in which the same was grown, or sell or remove said property or crop, or any part thereof, without the consent in writing of the mortgagee first had and obtained, shall be guilty of a misdemeanor, but if such sale be made or removal had with intent to deprive the mortgagee of his claim thereto and interest thereon, such person is guilty of larceny and shall be punished in the same manner and to the same extent as for larceny of the property so removed or disposed of. [Amendment approved March 8, 1915; Laws 1915, c. 94, p. 162. Prior amendment: See Laws 1913, p. 383.]

Section 17 was also amended to read as follows at the same session of the legislature:

"§ 17. Any person who has executed a mortgage upon personal property, except locomotives, engines, rolling stock of a railroad, steamboat machinery and vessels in actual use, who shall, during the existence of the lien or title created by such mortgage, remove the same from the county where said property was situated at the time of the execution of the mortgage, or in case of a mortgaged crop, from the land on which the same was grown,

or sell or remove said property or crop, or any part thereof, without the consent in writing of the mortgagee, first had and obtained shall be guilty of misdemeanor, but if such sale be made, or removal had, with intent to deprive the mortgagee of his claim thereto, or interest therein, such person is guilty of larceny and shall be punished in the same manner and to the same extent as for larceny of the property so removed and disposed of. [Amendment approved March 8, 1915; Laws 1915, c. 125, p. 280.]"

§ 5773a. Repealing Clause.

(Section 18.) Sections 5757, 5758, 5759, 5760, 5761, 5762, 5763, 5764, 5765, 5766, 5767, 5768, 5769, 5770, 5771, 5772 and 5773 of the Revised Codes of Montana of 1907, and all acts and parts of acts inconsistent with this act are hereby repealed; provided, however, that the provisions of this act shall not affect mortgages now executed and filed, and as to such mortgages, sections 5757 to 5773, both inclusive, shall remain in force.

This act shall take effect and be in force from and after the first day of April, 1913. [Amendment approved March 14, 1913; Laws 1913, p. 383.]

PLEDGE.

§ 5774.

The interest that one has in a contract to purchase land, for which part payment has been made, and of which he has taken possession, may be pledged as collateral security for the payment of a note. *Ringling v. Smith River D. Co.*, 48 Mont. 467, 475, 138 Pac. 1098.

A lease of, or mortgage upon, real estate may be pledged; and there seems to be no difference in principle between the pledge of a lease and the pledge of a contract to purchase land. *Ringling v. Smith River D. Co.*, 48 Mont. 467, 476, 138 Pac. 1098.

If a principal deposits money in a bank to indemnify the sureties on his bond against possible loss, such deposit is a pledge and title to it, as between the principal and the sureties, is in the former; hence, any interest thereon belongs to the principal and not to the sureties. *Leggat v. Palmer*, 39 Mont. 302, 308, 102 Pac. 327.

Evidence showing that a transfer of corporate stock was intended to secure a loan and not as an absolute sale. *Murray*

v. Butte-Monitor T. M. Co., 41 Mont. 449, 456, 463, 110 Pac. 497.

Where property is sold under a contract providing that title shall remain in the seller until the purchase price is paid, the seller does not have a mortgage or lien upon the property within the attachment statute (Rev. Codes, § 6656). *State ex rel. Malin-Yates Co. v. Justice of Peace Court (Mont.)*, 149 Pac. 709.

Editorial Notes.

Distinction between pledge and chattel mortgage. *Ann. Cas.* 1912B, 962.

Law of collateral securities. 49 Am. Dec. 730; 32 Am. St. Rep. 711.

§ 5777.

A chattel mortgage upon cows, in which no mention is made of their increase, does not cover their calves in gestation at the time of the execution of the mortgage and born prior to foreclosure. *Demers v. Graham*, 36 Mont. 402, 408, 122 Am. St. Rep. 384, 13 Ann. Cas. 97, 14 L. R. A. (N. S.) 431, 93 Pac. 268.

LIENS.

§ 5800.

Inapplicability of section where vendor retains legal title. See note post, § 6039.

Editorial Notes.

Lien of vendor, and its waiver of transfer. 12 Am. Dec. 262; 28 Am. Dec. 199; 137 Am. St. Rep. 185.

Lien of vendor against property of married woman. 34 Am. Rep. 614.

Lien of vendor, remedies for enforcing. 17 Am. St. Rep. 232.

Right to enforce implied vendor's lien where remedy for purchase price is barred by statute of limitations. *Ann. Cas.* 1914A, 278.

Right of creditor of vendor to enforce implied vendor's lien. *Ann. Cas.* 1914C, 499.

§ 5803.

Measure of damages for breach of agreement to purchase shares of corporate stock. See note post, § 6081.

§ 5815. Lien for Service of Stallion.

Whenever the owner or agent of any stallion shall have complied with the provisions of sections 5813 and 5814 of the Revised Codes of Montana, 1907, and have secured a license from the stallion registration board, the services of such stallion shall become a lien on each mare served, together with a foal of such mare served from such service in an amount

agreed upon between the parties at the time of the service; or if no agreement was entered into by them, in such amount as specified as service fee of stallion or stallions in the statement of the owner or agent filed with the county clerk; provided, a notice of lien shall be filed within twelve months after such service; such lien shall terminate at the end of one year from the date of filing notice thereof, unless within that time an action shall be commenced for the enforcement thereof. The owner of any mare so served, or foal of any mare resulting from such service, upon which there exists a lien on file for stallion service, as herein provided, who shall sell, dispose of, mortgage or otherwise encumber, or conceal such mare or foal, without the written consent of the person or persons having such lien, with the intent to deprive or defraud the owner or holder of such lien of his security had thereby, is guilty of a misdemeanor, and is punishable by a fine of not less than twenty-five dollars and not more than two hundred dollars, or by imprisonment in the county jail not less than ten days and not more than ninety days, or by both such fine and imprisonment. [Amendment approved March 1, 1913; Laws 1913, p. 65.]

§ 5819. Liens on Logs, Ties and Other Timber.

Every person performing labor upon, or who shall assist in obtaining or securing sawlogs, piling, railroad ties, cordwood or other timber, has a lien upon the same and upon all other sawlogs, piling, railroad ties, cordwood or other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed, for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood or other timber in said claim or lien described, whether such work or labor was done at the instance of the owner of the same or his agent, or a contractor or subcontractor or any person in behalf of such owner or his agent, or a contractor or subcontractor. The cook in a logging camp shall be regarded as a person who assists in obtaining or securing any of the timber herein mentioned. [Amendment approved March 3, 1909; Laws 1909, p. 66.]

This act amends the law giving a lien upon logs and lumber to laborers engaged in logging, etc., broadening the definition of the agency of employment. *Lane v. Lane Potter Lumber Co.*, 40 Mont. 541, 107 Pac. 898.

This section giving liens to persons performing labor in logging operations, creates a right where none existed before, and the steps necessary to secure them must be taken strictly in accordance with the requirements of the statute. *Lane v. Lane Potter Lumber Co.*, 40 Mont. 541, 547, 107 Pac. 898.

The statute relative to mechanics' liens is materially different from that concerning loggers' liens, and cases upon the former are inapplicable to the latter. *Lane v. Lane Potter Lumber Co.*, 40 Mont. 541, 550, 107 Pac. 898.

The loggers' lien legislation, sections 5819-5821, creates an equity in three classes of persons, namely: 1. Those who are employed to obtain or secure rough timber and transport it to the mill;

2. Those who are employed to assist in the manufacture of it into lumber in any form; and 3. Those who own the land from which the timber is taken. *Lane v. Lane Potter Lumber Co.*, 40 Mont. 541, 550, 107 Pac. 898.

Under a statute requiring that the lien claimant must have been employed "by the owner or his agent," the claimant of a lien for labor performed in the cutting of logs, cannot establish his lien upon evidence that he was employed, not by the owner or his agent, but by an independent contractor. *Lane v. Lane Potter Lumber Co.*, 40 Mont. 541, 551, 107 Pac. 898.

Editorial Notes.

Who is "laborer" within statute giving lien to laborers. *Ann. Cas.* 1913B, 138.

§ 5820.

Who is entitled to lien. See note ante, § 5819.

§ 5829.

In an action to foreclose a logger's lien, the plaintiff may waive his lien and take a personal judgment for the amount claimed to be due under the contract. *Logan v. Billings & N. R. R. Co.*, 40 Mont. 467, 470, 107 Pac. 415.

Though the complaint, in an action to foreclose a logger's lien, alleges a com-

mon or joint liability of several defendants, the plaintiff, after abandoning his claim of lien, may, under sections 6711 and 6712, post, have judgment against any number less than all of them, against whom a liability is shown, though the proof fails as to the others. *Logan v. Billings & N. R. R. Co.*, 40 Mont. 467, 471, 107 Pac. 415.

BILLS AND NOTES.

§ 5842.

The provisions of the negotiable instruments law, sections 5842-6037a, in so far as they are clear and unambiguous, must control in determining the rights of parties to negotiable instruments. *Brophy Grocery Co. v. Wilson*, 45 Mont. 489, 493, 124 Pac. 518.

Negotiability of note containing provision for extension of time for payment. *Ann. Cas.* 1914B, 210.

§ 5900.

Part payment of the principal of a demand note is evidence of its dishonor. *Brophy Grocery Co. v. Wilson*, 45 Mont. 489, 494, 124 Pac. 518.

§ 5849.

The statute concerning the contract to be embodied in a negotiable instrument is clearly prohibitory in character, and applies to all sorts of conditions not certain of fulfillment, whether they attach before or after maturity, and to all sorts of contracts other than the principal promise and those stipulations which fall within the exceptions provided for in the statute. *State v. Mitton*, 37 Mont. 366, 374, 127 Am. St. Rep. 732, 96 Pac. 926.

If the payee of a demand note, upon which partial payments have been made, almost to the full amount of the note, indorses and transfers it, long after it must necessarily have been regarded, by both payee and maker, as due, to a company which has notice, through one of its employees, that there is a dispute between the maker and the payee as to whether any balance remains unpaid on the note, the company is not a holder in due course, but must be held to have taken the paper with notice of its dishonor. *Brophy Grocery Co. v. Wilson*, 45 Mont. 489, 493, 124 Pac. 518.

Editorial Notes.

Negotiable instruments, what are. 14 Am. Dec. 421; *Ann. Cas.* 1912D, 4; 30 L. R. A. (N. S.) 40.

Negotiability, attorney's fees, effect of provision for payment of. 21 Am. Rep. 212; *Ann. Cas.* 1912D, 165; 20 *Ann. Cas.* 1371.

Negotiability of bill or note containing provision authorizing confession of judgment. *Ann. Cas.* 1913A, 206.

Negotiability of instrument referring to particular fund or account. *Ann. Cas.* 1913C, 932; 11 *Ann. Cas.* 599.

Editorial Notes.

Negotiable instruments, bona fide holder of, who is. 3 Am. Dec. 235; 9 Am. Dec. 272; 44 Am. Dec. 698.

Negotiable, bona fide holder's right to recover on. 26 Am. Dec. 156.

Bona fide purchaser, transferee in payment of an antecedent debt, whether is a. 35 Am. Rep. 688; 1 *Ann. Cas.* 275; 31 L. R. A. (N. S.) 288.

Fraud in inception of negotiable, does not prejudice a bona fide holder. 11 Am. St. Rep. 309.

§ 5923. Instruments Payable at Bank.

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. But where the instrument is made payable at a fixed or determinable future time, the order to the bank is limited to the day of maturity only. [Amendment approved March 4, 1909; *Laws* 1909, p. 112.]

RELIEF—FORFEITURES.

§ 6038.

Exemplary damages for failure to stop and take up passenger. See note post, § 6047.

He who seeks equity must do equity. See note post, § 6039.

Applied in *Burles v. Oregon etc. R. Co.*, 49 Mont. 129, 131, 140 Pac. 513.

§ 6039.

Action to enforce forfeiture is different from action for rescission. See note ante, § 5065.

Time as essence of contract. See note ante, § 5047.

Relief in case of forfeiture. See notes ante, §§ 5054 and 5065.

Where the terms of a contract between a vendor and a purchaser have not been complied with by the latter, and the vendor seeks to have the contract canceled as a menace to his title, the question as to whether the purchaser is entitled to recover payments made, or any part thereof, is left open and adjudicated. *Suburban Homes Co. v. North*, 50 Mont. 108, 145 Pac. 2.

Where a purchaser has failed to make payments, according to the terms of his contract, but has made some partial payments, before his breach of the contract, he cannot, ordinarily, recover the payments made before the breach, nor can he, under any circumstances, recover them without alleging and proving that the default was not the result of his "grossly negligent, willful, or fraudulent breach of duty." *Suburban Homes Co. v. North*, 50 Mont. 108, 145 Pac. 2.

The party who invokes the protection of this section must set forth facts that will appeal to the conscience of a court of equity. *Fratt v. Daniels-Jones Co.*, 47 Mont. 487, 499, 133 Pac. 700.

Before a party can be protected under this section from loss in the nature of a forfeiture of payments made under a contract that he has failed to fully perform, he must show, by his pleading and proof, that his breach of duty was not, among other things, grossly negligent; if he has been negligent, and no adequate excuse is made for his failure to protect his interests under the contract, he is not entitled to relief. *Donlan v. Arnold*, 48 Mont. 416, 424, 138 Pac. 775.

Where a vendor retains the legal title to property sold to a purchaser, who defaults in meeting deferred payments, and an action is brought to enforce a forfeiture caused by such default, sections

5715 and 5800, ante, are not pertinent nor applicable; there is no lien; and, therefore, there is no basis for denying a forfeiture of the contract of sale. *Cook-Reynolds Co. v. Chipman*, 47 Mont. 289, 299, 133 Pac. 694.

Whether a stipulation in a contract for the sale of real estate, that the purchaser, in case of his default, shall forfeit all advance payments made by him, is or is not a stipulation for liquidated damages, and within the inhibition of section 5054, ante, a purchaser of property who makes default is not, in the absence of an equitable showing, entitled to a return of any advance payments made by him. *Cook-Reynolds Co. v. Chipman*, 47 Mont. 289, 297, 133 Pac. 694.

If a person buys personal property, making part payment, and agreeing to make an advance payment on a certain date, or forfeit the payment made, but refuses to complete the transaction, the seller being willing to fulfill its stipulations, the buyer cannot recover back the part payment made, without alleging and proving facts and circumstances upon which, inequity and good conscience, he should have relief from the forfeiture, and which excuse him from the imputation of gross negligence, or willful or fraudulent breach of duty. *Clifton v. Willson*, 47 Mont. 305, 311, 132 Pac. 424.

In an action against a corporation, to enforce the immediate forfeiture of a contract of purchase for the vendee's failure to make any deferred payment, the corporation is not entitled to any relief on the ground that its officers were so engrossed with other business that they forgot that a payment was due on the contract, especially where time has been made of the essence of the contract. *Fratt v. Daniels-Jones Co.*, 47 Mont. 487, 500, 133 Pac. 700.

Instance of defendant vendee's right to relief, from forfeiture of a large advance payment, as provided by contract. *Cook-Reynolds v. Chipman*, 47 Mont. 289, 302, 133 Pac. 694.

Editorial Notes.

Relief in equity from forfeitures. 68 Am. Dec. 85; 86 Am. St. Rep. 48.

DAMAGES.**§ 6040.**

Damages for dissolution of partnership between physicians. See note ante, § 5475.

He who seeks equity must do equity. See note ante, § 6039.

Unlawful omission, what is. See note ante, § 5051.

It is not the theory of our code, as evidenced by this section and sections 6041, 6068, and 6071, that substantial damage

suffered by one through the fault of another shall be unredressed; on the contrary, it is the intention of the law that, in all cases, the damaged party shall have full compensation. *Chestnut v. Sales*, 49 Mont. 318, 324, 52 L. R. A. (N. S.) 1199, 141 Pac. 986.

Any person who suffers detriment by reason of another's failure to perform an act imposed by law may recover damages. *Conway v. Monidah Trust*, 47 Mont. 269, 279, 132 Pac. 26.

If, through the negligence of a town, an explosion occurs, which causes a woman to suffer a miscarriage, she may recover damages for any mental or physical suffering attendant upon the miscarriage, but injured feelings following the miscarriage, not a part of the pain naturally attending it, are too remote to be considered an element of damage. *Hasty v. Moulton Water Co.*, 39 Mont. 310, 313, 102 Pac. 310.

Editorial Notes.

What recoverable as damages. 69 Am. Dec. 725.

Compensatory damages, what are. 27 Am. Rep. 528.

Consequential, liability for damages. 36 Am. Rep. 382.

Proximate and remote consequences, what are. 36 Am. St. Rep. 807.

§ 6041.

Right to damages. See note ante, § 6040. He who seeks equity must do equity. See note ante, § 6039.

§ 6043.

Where an employee recovers for services rendered under an oral agreement, interest may properly be allowed on the amount awarded. *Albertini v. Linden*, 45 Mont. 398, 400, 123 Pac. 400.

Interest on a balance due a physician for medical services is properly allowable in his action to recover such balance. *Leggat v. Gerrick*, 35 Mont. 91, 95, 8 L. R. A. (N. S.) 1238, 88 Pac. 788.

If a person with money in a bank, part of which is subject to check, the remainder being shown by a pass-book, is indebted on a note to the bank in excess of the amount of such money, the effect of the suspension and declared insolvency of the bank is to make the deposits due and actionable; the depositor is, therefore, entitled to interest on the deposits from the time that the bank's doors were closed until the date of the judgment on the note. *Williams v. Johnson*, 50 Mont. 7, 144 Pac. 768.

Editorial Notes.

Right of jury to allow interest on damages for personal injuries. Ann. Cas. 1913B, 207.

§ 6044.

If buck sheep are allowed to run at large and get into a band of ewes, with the result that many of the ewes become pregnant with lamb, which are delivered at a season of the year when it is impossible to keep either the ewes or the lambs dropped by them alive, and the owner of the ewes sues for damages for

the loss of ewes and lambs that died, it is, in fact, an action for trespass to personal property; there can be no recovery for the lambs, but the measure of damages for the loss of the ewes is their market value at the time of the trespass, with interest from that time in the discretion of the jury. *Ball Ranch Co. v. Hendrickson*, 50 Mont. 220, 146 Pac. 278.

Editorial Notes.

Interest, when allowable in absence of express contract. 28 Am. Rep. 314.

§ 6046.

This section has no application to moneys deposited to indemnify sureties on a bond against loss; in such a case, the deposit is a pledge, not a debt. *Leggat v. Palmer*, 39 Mont. 302, 309, 102 Pac. 327.

Editorial Notes.

Acceptance of principal sum as affecting right to interest. 40 L. R. A. (N. S.) 588.

§ 6047.

Damages for failure to stop and take up passenger. See note post, § 6068.

Damages for dissolution of partnership between physicians. See note ante, § 5475.

Railroad company is answerable in damages for failure to stop and take up passenger. See ante, § 4325.

Applied in *Burles v. Oregon etc. R. Co.*, 49 Mont. 129, 132, 140 Pac. 513.

Punitive damages may be recovered against a mining company for the wrongful death of a miner, when the defendant is charged primarily as the wrongdoer. *Olsen v. Montana Ore Purchasing Co.*, 35 Mont. 412, 89 Pac. 731.

In cases of conversion of personal property, the statute authorizes the imposition of punitive damages, where the defendant acted maliciously, fraudulently or oppressively, either in taking or detaining the property in controversy. *De Celles v. Casey*, 48 Mont. 568, 575, 139 Pac. 586.

If the engineer of a railroad train sees a signal to stop, but fails to stop, for a passenger, exemplary damages may be awarded against the railroad company, if the jury find that there was any oppression, malice, or fraud. *Burles v. Oregon Short Line R. R. Co.*, 49 Mont. 129, 132, 140 Pac. 513.

The giving of an instruction that exemplary damages may be awarded for oppressively, fraudulently, or maliciously withholding chattels after demand, is justified, when in an action for damages for a conversion. *Shandy v. McDonald*, 38 Mont. 393, 401, 100 Pac. 203.

Editorial Notes.

Exemplary or punitive damages, when allowable. 27 Am. Dec. 684; 28 Am. St. Rep. 870.

Exemplary damages, rules respecting the allowance of. 50 Am. Dec. 767.

Right to exemplary damages in action for breach of promise to marry. Ann. Cas. 1914B, 319.

Right to assess punitive damages in different amounts against joint defendants. Ann. Cas. 1913D, 107.

§ 6048.

He who seeks equity must do equity. See note ante, § 6039.

Circumstances under which damage to a mining company's credit, destruction of its business, and loss of its property through sales under a judgment secured by employees for wages due at the time an attachment was levied on its real property was held not to have been the proximate consequences of the attachment, for which the surety on the attachment undertaking could be held liable. *Plymouth Gold Min. Co. v. United States Fidelity etc. Co.*, 35 Mont. 23, 30, 10 Ann. Cas. 951, 88 Pac. 565.

The damages recoverable for the breach of an obligation arising from contract must be limited to such as may fairly be supposed to have been within the contemplation of the parties when they entered into the contract, and such as might naturally be expected to result from its violation; in no case is the plaintiff entitled to recover anything more than he would have received had the contract been performed by the defendant on his part, assuming that it had been performed. *Myers v. Bender*, 46 Mont. 497, 508, 129 Pac. 330.

A client's failure to pay an attorney his fee, when it becomes due, is a breach of an obligation arising from contract, and the measure of damages for such breach is the principal amount, less payments made, with interest at the legal rate to the time of trial. *Myers v. Bender*, 46 Mont. 497, 508, 129 Pac. 330.

Remedy available, where the plaintiff is prevented by defendant from performing his contract. *McFarland v. Welch*, 48 Mont. 196, 198, 136 Pac. 394.

Editorial Notes.

Measure of damages for breach of an executory contract. 42 Am. Dec. 48.

Measure of damages for a breach of contract. 53 L. R. A. 34.

Measure of damages for breach of agreement by seller not to re-enter business in competition with buyer. Ann. Cas. 1914A, 1153.

Damages for breach of contract for services of theatrical performer. Ann. Cas. 1914B, 9.

§ 6049.

Where, in an action for the breach of a contract, the admitted facts do not show injury, and there is a lack of definite statement by witnesses justifying an inference that the defendant has suffered damage, a claim for damages in a substantial amount is properly considered without foundation in the evidence. *Busbee v. Gagnon Co.*, 50 Mont. 203, 146 Pac. 275.

§ 6054.

This section applies to an agreement to convey an equitable as well as a legal estate. *Ross v. Saylor*, 39 Mont. 559, 565, 104 Pac. 864.

In an action to recover damages for the breach of an agreement to convey real property, situated in another state, expenses incurred by the plaintiff in removing his family to that state, preparatory to taking possession of the lands sold to him by the defendant, as well as counsel fees and court costs paid by the plaintiff in defending an action to quiet title, brought against him by the defendant's prior grantee, are recoverable under this section, as "expenses properly incurred in preparing to enter upon the land." *Ross v. Saylor*, 39 Mont. 559, 570, 104 Pac. 864.

§ 6059.

Measure of damages for breach of agreement to purchase shares of corporate stock. See note post, § 6081.

§ 6068.

Exemplary damages for failure to stop and take up passenger. See note ante, § 6047.

Inapplicability of section in action against contemner for damages. See note post, § 7318.

Right to damages. See note ante, § 6040.

Applied in *Burles v. Oregon etc. R. Co.*, 49 Mont. 129, 133, 140 Pac. 513.

In case a city maintains a nuisance, the measure of damages is declared by this section to be the amount which will compensate the injured party for all the detriment approximately caused thereby. *Murray v. Butte*, 35 Mont. 169, 88 Pac. 789.

One who has abated a nuisance at his own expense, after a refusal by the municipality, which has created it, to remedy the evil, may recover the necessary expense incurred by him in so doing as part of the damages. *Murray v. Butte*, 35 Mont. 169, 88 Pac. 789.

In an action to recover damages for false imprisonment, the court may prop-

erly call the attention of the jury to the provisions of this section as to the measure of recovery. *Kroeger v. Passmore*, 36 Mont. 504, 510, 14 L. R. A. (N. S.) 988, 93 Pac. 805.

To enable the plaintiff in an action for personal injuries, to recover damages, he must show that the negligence charged was a proximate cause of the injury. *Therriault v. England*, 43 Mont. 376, 382, 116 Pac. 581.

If the engineer of a railway train sees a signal to stop, but fails to stop, for a sick passenger, the probable serious consequences to follow from missing the train may be considered as an element of damages. *Burles v. Oregon Short Line R. R. Co.*, 49 Mont. 129, 133, 140 Pac. 513.

In an action for damages, it is not necessary to show that the wrongdoer ought to have anticipated the particular injury which resulted; it is sufficient to show that he ought to have anticipated that some injury was likely to result as the reasonable and natural consequence of his negligence. *Mize v. Rocky Mountain Bell Tel. Co.*, 38 Mont. 521, 532, 129 Am. St. Rep. 659, 16 Ann. Cas. 1189, 100 Pac. 971.

It is not necessary to show that a wrongdoer ought to have anticipated the particular injury which did result from his negligence, but it is sufficient to show that he ought to have anticipated that some injury was likely to result as the reasonable and natural consequence thereof; but, if a minor employed by a gun club to load the automatic traps in the trap-house, used to propel clay pigeons, is injured by stray shot, while at a place in the trap-house, at which he has no right to be, and while not in the performance of his duties, it cannot be said that the members of the club ought to have anticipated that the minor would be doing anything other than that required by his duties; or that he would be at any place in the trap-house other than at the trap when the shooting was in progress; or that some injury was likely to result to him. *Therriault v. England*, 43 Mont. 376, 384, 116 Pac. 581.

An action to recover the value of ore, alleged to have been mined from a vein owned by the plaintiff, and to have been converted by the defendant, is the same in legal effect as an action for the conversion of personal property; and, in view of this section and section 6071, post, the plaintiff, where he prevails, is entitled, as a matter of law, to interest on the value of the ore converted. *Montana Min. Co. v. St. Louis M. & M. Co.*, 183 Fed. 51, 70, 105 C. C. A. 343.

Where one was injured by falling into an open cellarway in the defendant's store, his earning capacity may be so small as to be a negligible element in making up an estimate of the damages that

he may recover; nevertheless, he is entitled to compensation for the destruction of his capacity to pursue his established course of life, an element distinct from the loss of earning capacity. *Montague v. Hanson*, 38 Mont. 376, 386, 99 Pac. 1063.

Where a minor is employed by a gun club to load the automatic traps used to propel clay pigeons, and, while in the trap-house, but at a crack or opening, the existence of which the club does not know, and at which place the minor has no right to be, he is struck in the face by scattering shot from a gun prematurely discharged by one of the shooters, he cannot recover damages of the club, because he placed himself in a known situation of danger, and but for his own act would not have been injured. *Therriault v. England*, 43 Mont. 376, 386, 116 Pac. 581.

Editorial Notes.

Measure of damages for the destruction of property having no market value at the place of destruction. 62 Am. St. Rep. 791; 57 L. R. A. 193.

Damages for injuries to growing crops. 140 Am. St. Rep. 309; 6 Ann. Cas. 949; 12 Ann. Cas. 782; 12 L. R. A. (N. S.) 267; 27 L. R. A. (N. S.) 168; 37 L. R. A. (N. S.) 976.

Fright as an element of damages. 77 Am. St. Rep. 859.

Right to recover damages for bodily pain and suffering resulting from fright without actual physical violence. Ann. Cas. 1913E, 505; 12 Ann. Cas. 741.

Damages for mental suffering disconnected from physical injury. 36 Am. Rep. 306.

Mental anguish as an element of damages. 7 Am. St. Rep. 534; 30 Am. St. Rep. 711.

§ 6069.

Inapplicability of section in action against contemner for damages. See note post, § 7318.

In an action for the wrongful occupation and detention of real property, the rental value thereof, during the time of such wrongful occupation, may be proved as an element of damages, under an allegation that the "reasonable value of the rents and profits for the use and occupation of the premises" is a designated sum. *Leyson v. Davenport*, 38 Mont. 62, 68, 98 Pac. 641.

§ 6071.

Right to damages. See note ante, § 6040.

Inapplicability of section in action against contemner for damages. See note post, § 7318.

Right to interest. See note ante, § 6068.

In conversion, the plaintiff is entitled to recover the value of personal property, at the time of its conversion, with interest from the date of the conversion. *De Celles v. Casey*, 48 Mont. 568, 577, 139 Pac. 586.

Editorial Notes.

What constitutes conversion of personal property. 15 Am. Dec. 151; 24 Am. St. Rep. 795.

Measure of damages in action of trover. 24 Am. Dec. 70; 54 Am. Rep. 421.

Necessity of demand to support action of trover. *Ann. Cas.* 1913A, 1105, 1108.

§ 6081.

If a person fails to keep his agreement to purchase certain shares of stock of a broker, such agreement binding him to receive and pay for the same within a stipulated number of days, at which time title shall pass, and the broker, after such breach, sells the stock in open market at the best available price, the measure of damages is the difference between the price fixed in the contract and the value of the shares to the seller. *Welch v. Nichols*, 41 Mont. 435, 441, 110 Pac. 89.

SPECIFIC PERFORMANCE.

§ 6099.

It is not necessary in an action for the specific performance of a contract for the sale of real property, for the plaintiff, asking for a preliminary injunction, to allege that he has no adequate remedy at law; when it appears that the defendant has refused to comply with his contract, the presumption attaches that the plaintiff has suffered detriment, which is irreparable in an action for damages; he is, therefore, prima facie entitled to invoke the aid of equity to obtain equitable relief, namely, the performance of the contract. *Lowery v. Cole*, 47 Mont. 64, 68, 130 Pac. 410.

§ 6103.

All the negative statements in this section need not be avoided in a petition to compel an executor or administrator to convey, under section 7614, post. In *re Grogan's Estate*, 38 Mont. 540, 542, 100 Pac. 1044.

Editorial Notes.

Mutuality of contract. 7 Am. Dec. 492.

Specific performance of contracts. 23 Am. Dec. 423.

RESCISSION AND CANCELLATION.

§ 6113.

Equitable nature of restoration. See note ante, § 5065.

Editorial Notes.

Rescission of contracts, when, how and by whom made. 50 Am. Dec. 672.

Rescission, how and within what time right of must be exercised. 74 Am. Dec. 657.

§ 6115.

Under section 4684, ante, if a person buys land, without notice of an unrecorded mortgage thereon, the mortgage as to him is absolutely void; and, if he sells the land with a warranty of title against encumbrances, he may, under this section, maintain a suit to cancel a mortgage on the property placed of record after his purchase. *Kersten v. Coleman*, 50 Mont. 82, 144 Pac. 1092.

To justify the cancellation of an instrument under this section and section 6116, post, the plaintiff must show that injury may result to him if the instrument is left outstanding; the court cannot interfere if the instrument is invalid, and its invalidity appears directly or constructively upon its face. *Hicks v. Rupp*, 49 Mont. 40, 44, 140 Pac. 97.

Editorial Notes.

Cancellation of instruments notwithstanding a defense at law. 9 Am. St. Rep. 859.

Power of court of equity to cancel restrictive covenant in deed as cloud on title. *Ann. Cas.* 1912A, 765.

§ 6116.

Suit to cancel instrument. See note ante, § 6115.

INJUNCTIONS.

§ 6121. Injunctions not to be Granted in Certain Cases.

An injunction cannot be granted:

1. To stay a judicial proceeding pending at the commencement of an action in which the injunction is demanded unless such restraint is necessary to prevent a multiplicity of such proceedings.

2. To stay proceedings in a court of the United States.

3. To stay proceedings in another state upon a judgment of a court of that state.

4. To prevent the execution of a public statute, by officers of the law, for the public benefit.

5. To prevent the breach of a contract, the performance of which would not be specifically enforced.

6. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

7. To prevent a legislative act by a municipal corporation.

8. In labor disputes under any other or different circumstances or conditions, than if the controversy were of another or different character, or between parties neither or none of whom were laborers or interested in labor questions. [Amendment approved February 21, 1913; Laws 1913, p. 28.]

An injunction does not lie to restrain condemnation proceedings, in the absence of a showing that the restraint is necessary to prevent a multiplicity of proceedings. *Spratt v. Helena Power etc. Co.*, 37 Mont. 92, 94 Pac. 631.

Injunction against execution sales or other proceedings under final process. 30 L. R. A. 99.

Injunction against judgment. 30 L. R. A. 560; 31 L. R. A. 200, 747.

Injunction against enforcement of void municipal ordinances. 118 Am. St. Rep. 372.

Injunction to restrain breach of contract for services of theatrical performer. *Ann. Cas.* 1914B, 2.

Editorial Notes.

Injunction against the prosecution of an action in another state. 56 Am. Rep. 663; 59 Am. St. Rep. 880; *Ann. Cas.* 1913B, 204; 10 *Ann. Cas.* 26; 16 *Ann. Cas.* 673; 21 L. R. A. 71; 25 L. R. A. (N. S.) 268.

FRAUDULENT TRANSFERS.

§ 6128.

Question of fraud, how determined. See post, § 6130.

This section does not apply to judicial sales. *Kerr v. Blaine*, 49 Mont. 602, 606, 144 Pac. 566.

By this section, the legislature did not intend to go further than to declare that, during the time the vendor of personal property remains in possession after a sale, his creditors may seize the property in satisfaction of their claims, notwithstanding such sale. *Western Min. Supply Co. v. Quinn*, 40 Mont. 156, 166, 135 Am. St. Rep. 612, 20 *Ann. Cas.* 173, 28 L. R. A. (N. S.) 214, 105 Pac. 732.

The description in a mortgage of a band of sheep as "1,000 head of sheep on the range on Medicine Lodge creek, in Freemont county, Idaho, together with the wool and increase," is insufficient to identify the

subject of the encumbrance. *Massachusetts Sheep Co. v. Humble*, 36 Mont. 201, 92 Pac. 5271.

A sale by a sheriff, under a power contained in a chattel mortgage, falls within the scope of this section. *Kerr v. Blaine*, 49 Mont. 602, 607, 144 Pac. 566.

Though a bona fide sale of personal property is not accompanied by an immediate delivery, the sale is not void, as to an attaching creditor of the vendor, where the vendee, before the institution of the attachment suit, took and retained actual possession of the property. *Western Min. Supply Co. v. Quinn*, 40 Mont. 156, 166, 135 Am. St. Rep. 612, 20 *Ann. Cas.* 173, 28 L. R. A. (N. S.) 214, 105 Pac. 732.

If a sale is attacked solely on the ground of fraud in law, evidence reflecting simply upon the good faith of the parties to the sale is immaterial, though it would be material if the sale were attacked on the

ground of fraud in fact, as well as fraud in law. *Taylor v. Malta Mercantile Co.*, 47 Mont. 342, 346, 132 Pac. 549.

If a sale of livestock is followed by a change of possession, continued for over five months, the requirement of this section as to "continued change of possession," is satisfied. *Chestnut v. Sales*, 44 Mont. 534, 544, 121 Pac. 481.

Where the evidence shows that a warehouse, with its contents, is personal property, and that the entire property has been sold, the delivery of the key to the warehouse, if made before any creditor has moved to collect his debt, is such a constructive delivery as will prevent the presumption of fraud from attaching to the sale. *Western Min. Supply Co. v. Quinn*, 40 Mont. 156, 166, 135 Am. St. Rep. 612, 20 Ann. Cas. 173, 28 L. R. A. (N. S.) 214, 105 Pac. 732.

In a case where the evidence is conflicting, it is for the jury to say whether there was any such immediate delivery and actual and continued change of possession as to satisfy the statute of frauds. *Western Min. etc. Co. v. Melzner*, 48 Mont. 174, 177, 136 Pac. 44.

Evidence sufficient to show that a sale was followed by an immediate delivery and actual change of possession. *Chestnut v. Sales*, 44 Mont. 534, 544, 121 Pac. 481.

Evidence of delivery, and of change of possession, of sheep-shearing machinery, frame buildings, etc., insufficient to meet the requirements of this section. *Taylor v. Malta Mercantile Co.*, 47 Mont. 342, 350, 132 Pac. 549.

Editorial Notes.

Is failure to take immediate possession, upon a sale of chattels, cured by the taking of possession before attachment of the particular right or lien of the person attacking the sale. 28 L. R. A. (N. S.) 214.

Voluntary transfers, when are fraudulent conveyances. 7 Am. Dec. 362; 14 Am. Dec. 703; 28 Am. Rep. 721; 14 Am. St. Rep. 739.

Knowledge of fraudulent conveyance or notice to the grantor. 20 Am. St. Rep. 632.

Knowledge of vendee as affecting validity of fraudulent conveyances. 34 Am. St. Rep. 395; 31 L. R. A. 609; 32 L. R. A. 44.

Voluntary transfers, presumption that they are in fraud of creditors. 119 Am. St. Rep. 556.

Retention of vendor in employ of vendee as affecting change of possession within rule as to fraudulent conveyances. Ann. Cas. 1912A, 608.

Necessity for actual change of possession within rule as to fraudulent conveyances where joint owner sells interest in property in possession of other owner. Ann. Cas. 1912B, 460.

Liability on running account as existing or prior debt within rule as to fraudulent conveyances. Ann. Cas. 1913C, 1376.

Fraudulent conveyances, bona fide purchaser from fraudulent vendee. 28 Am. Dec. 688; 28 Am. Dec. 734.

Fraudulent conveyances, rights and title of parties thereunder. 34 Am. Dec. 765.

Right to purchase. 36 L. R. A. 335.

§ 6131.

Liability of garnishee to plaintiff. See post, § 6667.

The "Bulk Sales Law," sections 6131-6135, is within the state's police power and is constitutional; it does not deprive a merchant of his property without due process of law, nor of the equal protection of the laws. *Wheeler etc. Mer. Co. v. Moon*, 49 Mont. 307, 309, 141 Pac. 665.

If a merchant's stock is sold, without a compliance with the "Bulk Sales Law," the buyer is a trustee of the property purchased, to the extent of a creditor's claim, at least; and it is immaterial that he may have mingled the purchased goods with property of his own, so as to destroy their identity, or converted them into cash; equity will hold the trustee for the value. *Wheeler etc. Mer. Co. v. Moon*, 49 Mont. 307, 309, 141 Pac. 665.

Where a merchant has transferred his stock, without complying with the "Bulk Sales Law," and a judgment creditor of the merchant takes out an execution, the service of a copy of the execution upon the transferee, together with a notice that any personal property in his possession, or under his control belonging to the merchant, is attached in pursuance of such writ, operates to fasten upon such property a specific lien in favor of the plaintiff sufficient to enable him to prosecute a creditor's bill against such transferee or garnishee. *Wheeler etc. Mer. Co. v. Moon*, 49 Mont. 307, 309, 141 Pac. 665.

§ 6132. Sales in Bulk—Verified Statement.

Whenever any person shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash or on credit, and shall pay any part of the purchase price, or execute or deliver to the vendor thereof, or to his order, or to any person for his use, any promissory note, or other evidence of indebtedness for said purchase price, or any part thereof, without first having demanded and received from said vendor,

or from his agent, the statement provided for in section 6131 of the Revised Codes of Montana of 1907, and verified as there provided, and without paying, or seeing to it that the purchase money of the said property is applied to the payment of the bona fide claim of the creditors of the vendor as shown upon such verified statement, pro rata, such sale or transfer shall be fraudulent and void. [Amendment approved March 8, 1915; Laws 1915, p. 284.]

Editorial Notes.

Constitutionality of statutes prohibiting sales of merchandise in bulk. Ann. Cas. 1912C, 706; 1 Ann. Cas. 557; 14 Ann. Cas. 437.

Construction of statutory provision that sale of goods in bulk shall be presumed to be fraudulent and void. Ann. Cas. 1913C, 1214.

NUISANCES.

§ 6162.

Sufficiency of a complaint against a city, as stating a cause of action for the recovery of damages for maintaining a sewer in such a manner as to be a nuisance and to injure the plaintiff. Murray v. Butte, 35 Mont. 170, 88 Pac. 789.

The conduct of members of a labor union, and their sympathizers, in congregating in large numbers in the immediate vicinity of the property of a person in a city, who is deemed "unfair" to organized labor, and in impeding travel on the sidewalk in front of such property, and in interfering with the business there carried on, and with the customers at such place, constitutes a nuisance. Iverson v. Dilno, 44 Mont. 270, 273, 119 Pac. 719.

Editorial Notes.

Percolating of filthy water. 39 Am. Rep. 16.

Offensive trades and manufactures as nuisance. 42 Am. Rep. 540.

Businesses and machinery which may be enjoined as nuisance. 51 Am. Rep. 551.

Burning soft coal as nuisance. Ann. Cas. 1912B, 1036; 13 L. R. A. (N. S.) 465.

Gas plant as nuisance. 20 L. R. A. (N. S.) 466.

Undertaking establishment as nuisance. Ann. Cas. 1912B, 1208.

§ 6171.

A private person may maintain an action for a public nuisance, if it is specially injurious to himself; hence, where the conduct of defendants constituted a public nuisance, that fact would not defeat the plaintiff's right to an injunction. Iverson v. Dilno, 44 Mont. 270, 276, 119 Pac. 719.

Editorial Notes.

Public nuisances, private action for. 31 Am. Dec. 132; 25 Am. Rep. 533; 52 Am. Rep. 574; 1 Ann. Cas. 38; 17 Ann. Cas. 1128.

Public nuisance, injunction against, who may obtain. 67 Am. Dec. 203.

Public nuisances what are. 107 Am. St. Rep. 195.

Right of private citizen to maintain action to abate nuisance caused by obstruction of navigable stream. Ann. Cas. 1913E, 51.

§ 6175.

A complaint that the defendant city maintains a private nuisance, which the plaintiff may rightfully abate under the provisions of this section, is sufficient, when. Murray v. Butte, 35 Mont. 161, 168, 88 Pac. 789.

Editorial Notes.

Abatement of private nuisances, when justifiable. 43 Am. Rep. 24.

MAXIMS.

§ 6178.

If a judge, other than the one who presided at the trial, passes upon a motion for a new trial, the same presumption does not attach, on appeal, to his ruling, as if he had heard the witnesses; section 6179, post, and this section apply. Gibson v. Morris State Bank, 49 Mont. 60, 72, 140 Pac. 76.

§ 6179.

Application of section. See note ante, § 6178.

§ 6181.

Right to waive statute of limitations. See note ante, § 6445.

Waiver of right to administer. See note post, § 7450.

Waiver of right to disqualify judge. See note post, § 6315.

Waiver of right to require the sureties on an undertaking on appeal to justify. See note post, § 7124.

A party may waive the benefit of the statute of limitations, either before or after

the expiration of the prescribed limit, not only by either of the acts mentioned in section 6472, post, but also by express agreement, based upon a consideration, though made contemporaneously with, and as a part of, the principal agreement or obligation out of which the action arose. *Parchen v. Chessman*, 49 Mont. 326, 335, 142 Pac. 631.

A stipulation in a contract, waiving the benefit of the statute of limitations, is binding for a reasonable time; at least until the expiration of an additional period equal to that prescribed by the statute for the particular cause of action. *Parchen v. Chessman*, 49 Mont. 326, 335, 142 Pac. 631.

It must be assumed that a party who desires to waive his right is free to do so in any way and at any time he chooses. *Parchen v. Chessman*, 49 Mont. 326, 335, 142 Pac. 631.

Even as to a surviving husband or wife, the benefit of Revised Codes, section 7447, may be waived, either expressly or by a refusal or failure to claim, or by an unreasonable delay in claiming the advantage given by that section. In *re Infelise's Estate* (Mont.), 149 Pac. 365.

§ 6182.

This section is not inconsistent with the rule that a man may use his own property as he pleases, for all purposes for which it is adaptable, without being answerable for the consequences, if he does not designedly cause injury or create a nuisance, and exercises due care and caution; the owner of an irrigating ditch is not an insurer against damages that may result from its operation. *Fleming v. Lockwood*, 36 Mont. 384, 388, 122 Am. St. Rep. 375, 13 Ann. Cas. 263, 14 L. R. A. (N. S.) 628, 92 Pac. 962.

A land owner who lets a contract for the repair of a skylight on the roof of his building is liable for damages caused by the

negligent leaving of waste material on the roof in such manner that it was blown off and injured a near-by building, irrespective of whether or not the contractor was required to remove such waste material. *A. M. Holter Hardware Co. v. Western Mtg. etc. Co.* (Mont.), 149 Pac. 489.

§ 6183.

Application of maxim. See note post, § 8536.

§ 6192.

Applied to employer and employee, violating the eight-hour law. See note ante, § 6486.

§ 6195.

Applied to an action to recover land claimed by the plaintiff to have been rightfully entered by him under the public land laws of the United States, but which he claimed had been wrongfully patented to a railway company under its land grant, where he did not commence suit until fifteen years after patent to the railway company. *Kimes v. Northern Pac. Ry. Co.*, 49 Mont. 573, 575, 144 Pac. 156.

The maxim enunciated in this section was applied in a case where the plaintiff, knowing of the defendant's adverse claim to the property in controversy, remained silent for twelve years and offered no explanation for the delay in bringing suit. *Kavanaugh v. Flavin*, 35 Mont. 133, 137, 88 Pac. 764.

Editorial Notes.

Laches, when equity will refuse relief because of. 54 Am. Dec. 130; 2 Am. St. Rep. 795; 23 Am. St. Rep. 148.

§ 6200.

Applied in *Parchen v. Chessman*, 49 Mont. 326, 340, 143 Pac. 631.

RULES OF INTERPRETATION.

§ 6214.

Applied to statute of limitations. See note post, § 6458.

A liberal construction must be given statutes relating to the jurisdiction of justices' courts. *State v. Houston*, 36 Mont. 180, 92 Pac. 476.

Applied to appropriation of water. *Bailey v. Tintinger*, 45 Mont. 154, 173, 122 Pac. 575.

All statutes are to be liberally construed with a view to effect their objects and to promote justice. *Smith v. Smith*, 210 Fed. 947, 953.

§ 6215.

Application of section to contract of indemnity. See note ante, § 5653.

Editorial Notes.

Extent of adoption of common law. Ann. Cas. 1913E, 1232; 22 L. R. A. 501.

§ 6217.

Prohibition as to the transaction of judicial business. See post, § 6296.

Sunday is a legal holiday, but there is no prohibition against the performance of any public act on Sunday; the publication of an amendment to the state Constitution may be lawfully made on Sunday. *State v. Alderson*, 49 Mont. 387, 410, 142 Pac. 210.

§ 6219.

Applied in computing time for an appeal. *Jackway v. Hymer*, 42 Mont. 168, 169; 111 Pac. 720.

Editorial Notes.

Limitation of action; rule as to first and last days in computation of time. 38 L. R. A. (N. S.) 1160.

Inclusion of day of accrual of action in computing limitation against action. Ann. Cas. 1913D, 1068; 12 Ann. Cas. 58; 49 L. R. A. 193; 15 L. R. A. (N. S.) 686.

Computation of time. 7 Am. Dec. 250; 46 Am. Rep. 410; 78 Am. St. Rep. 872.

Computation of time for performance of act required by statute when last day falls on Sunday. 7 Ann. Cas. 325; 20 Ann. Cas. 1318.

§ 6220.

Publication, on Sunday, of proposed constitutional amendment is valid. See note ante, § 3552.

This section does not embody a prohibition; it merely provides an extra day of grace; any of the enumerated acts may be done lawfully on a holiday, but are in time if not done until the next business day. *State v. Alderson*, 49 Mont. 387, 411, 142 Pac. 210.

There is no prohibition against the performance of any public act on Sunday, as such. *State v. Alderson*, 49 Mont. 387, 410, 142 Pac. 210.

Service of summons on Sunday is not a nullity, but a mere irregularity. *Burke v. Interstate Sav. etc. Ass.*, 25 Mont. 315, 87 Am. St. Rep. 416, 64 Pac. 879.

§ 6222.

Under this section and section 6223, post, a person who has obtained a judgment against a corporation, for personal injuries, is a creditor of the corporation, though his judgment has not been entered; the judgment simply serves to establish that pre-existing fact and to put such person into a position to assert his right. *Pittsmtont Copper Co. v. O'Rourke*, 49 Mont. 281, 292, 141 Pac. 849.

§ 6223.

Creditor of corporation, who is. See note ante, § 6222.

§ 6224.

"Person" includes corporation. See ante, section 16, and post, sections 8071 and 8099; also note ante, section 4725.

Where a wife obtains a decree for separate maintenance but claims that there was a fraudulent conspiracy to defeat any decree she might obtain, by a disposition of her husband's property, she has an adequate remedy by execution, and, therefore, is not entitled to sue in equity by way of a creditor's bill. *Raymond v. Blancgrass*, 36 Mont. 449, 464, 15 L. R. A. (N. S.) 976, 93 Pac. 648.

A cause of action existing in favor of one of the parties is "property" which the other may reach by execution. *Raymond v. Blancgrass*, 36 Mont. 449, 464, 15 L. R. A. (N. S.) 976, 93 Pac. 648.

PART IV.

CODE OF CIVIL PROCEDURE.

§ 6248.

Examination and approval of claims against the state. See note ante, § 226.

Cited, in discussing the power of a district judge to appoint attendants. *State v. Sullivan*, 48 Mont. 320, 331, 137 Pac. 392.

When, by a general appropriation bill, provision has been made for the compensation of the stenographer of the supreme court, his claim for salary earned is not an unliquidated claim, requiring the approval of the board of examiners before the issuance of a warrant. *State v. Cunningham*, 39 Mont. 165, 172, 101 Pac. 962.

Where the state has failed to make provision for necessary assistants to the su-

preme court, that court may, both under its inherent authority and under the authority of this section, select and appoint them, and make the compensation due them for their services a charge against the state as a liquidated claim. *State v. Cunningham*, 39 Mont. 165, 172, 101 Pac. 962.

§ 6249.

City or town defined. See note ante, § 3202.

Applied in deciding that an unincorporated town may be a candidate for the county seat of a new county. *State v. Dale*, 47 Mont. 227, Ann. Cas. 1914D, 227, 131 Pac. 670.

SUPREME COURT.

§ 6251.

The supreme court has no original jurisdiction, in any case, except as authorized by the Constitution. *State v. Helena Waterworks Co.*, 43 Mont. 169, 172, 115 Pac. 200.

§ 6252.

Appellate nature of supervisory power of supreme court. See note post, § 6253.

§ 6253.

Setting aside findings, in an equity case, on motion for a new trial. See note post, § 6797.

The provision of this section, that the supreme court, in giving its decision, if a new trial be granted, "must pass upon and determine all the questions of law involved in the case, presented upon such appeal and necessary to the final determination of the case," is not binding upon that court. *State v. District Court*, 40 Mont. 206, 208, 105 Pac. 721.

The supreme court is authorized and required, in equity cases, to review all questions of fact arising from the evidence and determine the same as well as questions of law. *Pew v. Johnson*, 35 Mont. 173, 178, 119 Am. St. Rep. 852, 88 Pac. 770.

Where the supreme court, on appeal in an equity case, reverses the judgment, but no cause appears why a new trial or the taking of further testimony should be ordered, it will enter a judgment finally determining the cause. *North Real Estate etc. Co. v. Billings Loan etc. Co.*, 36 Mont. 356, 367, 93 Pac. 40.

In equity cases, the supreme court may examine the evidence and determine a question of fact for itself, but it cannot overturn the findings of the trial court, unless

there is a decided preponderance of the evidence against them. *Copper Mountain Min. & S. Co. v. Butte & Corbin etc. Min. Co.*, 39 Mont. 487, 494, 133 Am. St. Rep. 595, 104 Pac. 540.

In an equity case, the findings of the trial court will not be disturbed on appeal unless there is a decided preponderance of evidence against them. *Murray v. Butte-Monitor T. M. Co.*, 41 Mont. 449, 453, 110 Pac. 497.

The findings of a trial court will not be set aside in equity cases unless there is a decided preponderance in the evidence against them; and, when the evidence as it appears in the record, fully considered, furnishes reasonable grounds for different conclusions, the findings will not be disturbed. *Gibson v. Morris State Bank*, 49 Mont. 60, 72, 140 Pac. 76.

The supreme court will accept the findings of the trial court in equity proceedings, unless the appealing party can show that the evidence preponderates against such findings. *Consolidated etc. Min. Co. v. Struthers*, 41 Mont. 551, 555, 111 Pac. 150.

Where a decree of divorce must be reversed, it becomes the duty of the supreme court to determine the questions of law and fact presented by the record upon the whole case; it may make such disposition of the case as the circumstances may require; and, in doing this, it may consider written evidence that was erroneously excluded by the trial court, but incorporated in the record, as properly before it. *Bordeaux v. Bordeaux*, 43 Mont. 102, 109, 111, 115 Pac. 25.

The supreme court will, if deemed advisable, in a case where the title to a water right is sought to be quieted and the defendant enjoined from interference therewith, disregard questions presented upon alleged errors of the district court and dispose of the merits of the appeal upon a

review of the evidence alone. *Pew v. Johnson*, 35 Mont. 173, 178, 119 Am. St. Rep. 852, 88 Pac. 770.

The review under this section may go no further than to determine whether there is a decided preponderance in the evidence against the findings in the trial court; the supreme court will not undertake to try a case de novo and determine it as does the district court. *Pope v. Alexander*, 36 Mont. 90, 92 Pac. 203.

In actions at law, where the plaintiff should have been nonsuited, or a directed verdict for the defendant should have been entered, and the proper motion was made and denied, the supreme court will generally direct a final disposition of the cause. *Wertz v. Lamb*, 43 Mont. 477, 484, 117 Pac. 89.

The supreme court may, in an action to determine relative rights to the use of water, where the evidence is all before it, and there is no substantial conflict, order such modifications of the decree as will finally determine the controversy. *Bielenberg v. Eyre*, 44 Mont. 397, 400, 120 Pac. 243.

The procedure for the foreclosure of a mechanic's lien is sui generis; it is neither strictly at law nor in equity, but is a blending of both; hence it does not fall within the provisions of this section, where certain issues of fact raised by the pleadings were never fully tried in the district court, and the supreme court on appeal will not, therefore, enter a judgment finally disposing of the cause. *Wertz v. Lamb*, 43 Mont. 477, 485, 117 Pac. 89.

Much confusion would be avoided, in actions to establish mechanics' liens, if the question of indebtedness was first tried as an ordinary action at law, and, if anything is found to be due to the lien claimant, then proceed as in equity. *Wertz v. Lamb*, 43 Mont. 477, 485, 117 Pac. 89.

The supervisory power of the supreme court, granted by the Constitution, and which is also appellate in its nature, was designed to control summarily the course of litigation in the inferior courts, and to prevent injustice being done through a mistake of law, or a willful disregard of it, where there is no appeal from the erroneous action, or where, there being an appeal, the relief obtained thereby would be inadequate. *State v. Helena Waterworks Co.*, 43 Mont. 169, 173, 115 Pac. 200.

The purpose of supreme court rule 7, subdivision 3, requiring evidence to be incorporated in the bill of exceptions in the form of question and answer is to present to the court the evidence involving controverted questions of fact, in the exact words of the witnesses, to the end that the duty imposed upon the court by the statute may be properly discharged. *Koopman v. Mansolf* (Mont.), 149 Pac. 491.

§ 6255.

To authorize the supreme court to issue the writ of injunction in the exercise of its original equity jurisdiction, as distinguished from its power to grant the writ to preserve the subject of the action pending appeal, the rights of the "public" must be involved; the term "public" applies to the affairs of the state or some subdivision thereof. *State v. Helena Waterworks Co.*, 43 Mont. 169, 176, 115 Pac. 200.

No action can be commenced originally in the supreme court, for an injunction, in a case where a city is seeking to provide a water supply and to construct a system for itself; in such an enterprise the city acts in its private, corporate capacity, as distinguished from an exercise of its public powers. *State v. Helena Waterworks Co.*, 43 Mont. 169, 176, 115 Pac. 200.

DISTRICT COURTS.

§ 6265. Number of Judges in Fourth District.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That from and after the passage and approval of this act there shall be three judges in the fourth judicial district in the state of Montana, one of whom may have his chambers at Thompson, county seat of Sanders county.

(Section 2.) That the Governor shall appoint some fit and qualified person as additional judge of the said fourth judicial district to hold his office until the first Monday of January, 1917, or until his successor is duly elected and qualified.

(Section 3.) The compensation, powers and duties of said additional judge by this act created shall be the same as provided by law for district judges. [Amendment approved February 11, 1913; Laws 1913, p. 14.]

Where the vacancy occurs through the creation of an additional judgeship for a county and a person is appointed to fill it, the appointment contemplates the choosing of a judge at the next following general election and that the appointee shall then

give place to the judge so chosen. *State v. Lentz*, 50 Mont. 332, 146 Pac. 932.

§ 6269.

Filling vacancies in office. See note ante, § 420.

Election will be upheld as valid, when. See note ante, § 452.

A judge appointed to fill a vacancy can serve no longer than until the next general election in point of time and until his successor is elected and qualified; neither the legislature nor the governor can extend the term beyond that thus definitely fixed by the Constitution. *State v. Lentz*, 50 Mont. 322, 146 Pac. 932; overruling *State v.*

Smith, 35 Mont. 523, 10 Ann. Cas. 1138, 90 Pac. 750.

Editorial Notes.

Meaning of term "next regular election," or "next general election," etc., in constitutional or statutory provision fixing term of public office. 10 Ann. Cas. 1138.

§ 6278. Additional Judges in District, Their Duties and Powers.

In each judicial district which has now or may hereafter have more than one judge, as many terms or sessions of court may be held at the same time as there are judges in the district, either elected or appointed to, called into or assigned to the performance of the duties of holding court therein. The judges elected or appointed to hold office in each judicial district, having more than one judge, may divide the court into departments, prescribe the order of business and make rules for the government of such court. They must apportion the business of the court among themselves as equally as may be, but in case of their failure to make such apportionment for any cause, the supreme court, upon application of any interested person, shall make an order apportioning such business and cause the same to be entered upon the minute book of the district court in each county in such district and such order shall remain in full force and effect until modified or repealed by the authority making it. The failure or refusal of any district judge to carry out the terms of such order, shall constitute a contempt of the supreme court. [Amendment approved February 3, 1915; Laws 1915, p. 11.]

This section treats of the division of court business and the enactment of court rules as entirely independent matters. *State v. District Court*, 49 Mont. 158, 162, 141 Pac. 151.

The distribution of business is personal to the judges, and is not a subject within the purview of court rules. *State v. District Court*, 49 Mont. 158, 163, 141 Pac. 151.

The judges "must" apportion the business as equally as may be; the obligation is an absolute one; and the duty imposed is a legal duty, from the discharge of which there is no escape, save by resignation from office. *State v. District Court*, 49 Mont. 158, 162, 141 Pac. 151.

If a court has taken cognizance of a cause, it is beyond the power of any other court of concurrent jurisdiction, or of any

other department of the same court, to interfere; and, if it does so, its proceedings will be set aside. *State v. District Court*, 49 Mont. 158, 162, 141 Pac. 151.

The law clearly implies that, upon a change in the personnel of the judges, there shall be a redistribution of the business, if that is necessary to meet the convenience and choice of the judges. *State v. District Court*, 49 Mont. 158, 162, 141 Pac. 151.

Where a district court has two judges, and there exists no agreement as to the apportionment of the business of the court between them or their departments, either one, when in open court, possesses all the power and authority of the district court to hear and determine a case of which such court has jurisdiction. *State v. District Court*, 49 Mont. 158, 162, 141 Pac. 151.

§ 6278a. Fifth Judicial District—Judges.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That from and after the passage and approval of this act there shall be two judges in the fifth judicial district of the state of Montana.

(Section 2.) That the Governor shall appoint some fit and qualified person as additional judge of the said fifth judicial district to hold office until the first Monday of January in the year 1913, or until his successor is duly elected and qualified.

(Section 3.) The compensation, powers and duties of the said additional judge by this act created shall be the same as are provided by law for other district judges. [Approved March 4, 1909; Laws 1909, c. 91, p. 121.]

§ 6278b. Teton County Added to Eighth Judicial District—Judges.

(Section 1.) Teton county is hereby detached from the eleventh judicial district and added to the eighth judicial district and from and after the date and passage of this act the eighth judicial district of the state of Montana shall be composed of the counties of Cascade and Teton.

(Section 2.) From and after the passage and approval of this act there shall be two judges in the eighth judicial district.

(Section 3.) That the Governor of this state shall duly appoint some fit and qualified person as additional judge of the eighth judicial district to hold his office until the first Monday of January in the year 1911, or until his successor shall be duly elected and qualified.

(Section 4.) That one of the judges of said eighth judicial district shall maintain chambers at Choteau, the county seat of Teton county and also at Great Falls, the county seat of Cascade county, in said district, it being expressly provided, however, that said judge shall be at and maintain chambers in each of said counties at least once in each calendar month of each year.

(Section 5.) The compensation, powers and duties of the said judge, in said eighth judicial district, in this act created, shall be the same as are provided by law and the Constitution of the state for the district judge, save and except as otherwise provided in this act. [Approved February 22, 1909; Laws 1909, c. 26, p. 31.]

§ 6278c. Boundaries and Judges of Ninth, Tenth and Fourteenth Judicial Districts.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That there is hereby created a new judicial district of the state of Montana, to be known as the fourteenth judicial district of the state of Montana, and that the same shall embrace and comprise the territory within the counties of Broadwater and Meagher, within the state of Montana, which, from and after the passage of this act, shall constitute the fourteenth judicial district of the state of Montana.

(Section 2.) That the ninth judicial district of the state of Montana shall hereafter embrace the territory within the county of Gallatin.

(Section 3.) That the tenth judicial district of the state of Montana shall hereafter embrace the territory within the county of Fergus.

(Section 4.) That within thirty days after the passage and approval of this act, the Governor of this state shall appoint some fit and qualified person judge of the fourteenth judicial district.

(Section 5.) That the powers, duties, compensation and term of office of the judge of the fourteenth judicial district shall be the same as those provided by law and the Constitution of the state of Montana, for district judges.

(Section 6.) The provisions of this act shall not work the removal of any clerk of the district court of either Meagher or Broadwater county, nor affect their salaries. [Approved March 7, 1913; Laws 1913, c. 58, p. 112.]

§ 6278d. Judges in Twelfth Judicial District.

Be it enacted by the Legislative Assembly of the State of Montana:

That from and after the passage and approval of this act there shall be two judges in the twelfth judicial district of the state of Montana.

That the Governor shall appoint some fit and qualified person as additional judge of said twelfth judicial district to hold his office until the first Monday of January, in the year 1913, or until his successor is elected and qualified.

That one of the judges of said twelfth judicial district shall hold a session of court at Glasgow, the county seat of Valley county in said district, and that said judge shall be at and maintain chambers in said Valley county at least once in each calendar month of each year.

The compensation, powers and duties of the said additional judge, by this act created, shall be the same as are provided by law for other district judges. [Approved March 2, 1911; Laws 1911, c. 74, p. 142.]

§ 6278e. Judges for Thirteenth Judicial District.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That from and after the passage and approval of this act there shall be two judges in the thirteenth judicial district of the state of Montana.

(Section 2.) That the Governor shall appoint some fit and qualified person as additional judge of the said thirteenth judicial district to hold his office until the first Monday of January, 1913, or until his successor is duly elected and qualified.

(Section 3.) The compensation, powers and duties of the said additional judge by this act created shall be the same as are provided by law for other district judges. [Approved January 31, 1911; Laws 1911, c. 3, p. 8.]

§ 6278f. Creation of Fifteenth Judicial District.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That there is hereby created a new judicial district of the state of Montana, to be known as the fifteenth judicial district, and that the same shall embrace and comprise the territory within the counties of Rosebud and Musselshell within the state of Montana, which, from and after the passage of this act, shall constitute the fifteenth judicial district of the state of Montana.

(Section 2.) That the thirteenth judicial district of the state of Montana shall hereafter embrace the territory within the counties of Carbon, Big Horn, and Yellowstone.

(Section 3.) That within thirty days after the passage of this act the Governor of this state shall appoint and designate Honorable Charles L. Crum as the judge of the fifteenth judicial district.

(Section 4.) That the powers, duties, compensation, and term of office of the judge of the fifteenth judicial district shall be the same as those provided by law and the Constitution of the state of Montana.

(Section 5.) The provisions of this act shall not work the removal of any clerk of the district court of either Rosebud or Musselshell county, nor affect their salaries. [Approved March 1, 1915; Laws 1915, c. 51, p. 74.]

§ 6278g. Creation of Sixteenth Judicial District.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That there is hereby created a new judicial district of the state of Montana, to be known as the sixteenth judicial district, and the same shall embrace and comprise the territory within the counties of Custer, Fallon and Prairie, within the state of Montana, which, from and after the passage of this act, shall constitute the sixteenth judicial district of the state of Montana.

(Section 2.) That the seventh judicial district of the state of Montana shall hereafter embrace the territory within the counties of Dawson, Wibaux and Richland.

(Section 3.) That within thirty days after the passage and approval of this act, the Governor of the state shall appoint some suitable and qualified person judge of the sixteenth judicial district.

(Section 4.) That the powers, duties, compensation, and term of office of the judge of the sixteenth judicial district shall be the same as those provided by law and the Constitution of the state of Montana for district judges.

(Section 5.) The provisions of this act shall not work the removal of any clerk of the district court of either Custer, Fallon, Wibaux, Dawson, Richland or Prairie county, nor affect their salaries. [Approved March 1, 1915; Laws 1915, c. 50, p. 73.]

§ 6278h. Creation of Seventeenth Judicial District.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That there is hereby created a new judicial district of the state of Montana, to be known as the seventeenth judicial district of the state of Montana, and that the same shall embrace and comprise the territory within the counties of Phillips, Valley, and Sheridan within the state of Montana, which from and after the passage of this act shall constitute the seventeenth judicial district of the state of Montana.

(Section 2.) That the twelfth judicial district of the state of Montana shall hereafter embrace the territory within the counties of Choteau, Hill, and Blaine, and shall have but one judge.

(Section 3.) That within thirty days after the passage and approval of this act, the Governor of this state shall designate and appoint the Honorable Frank N. Utter as judge of the said seventeenth judicial district.

(Section 4.) That the powers, duties, compensation, and term of office of the judge of the seventeenth judicial district shall be the same as those provided by law and the Constitution of the state of Montana for district judges.

(Section 5.) The provisions of this act shall not work the removal of any clerk of the district courts of either the counties of Phillips, Valley, or Sheridan, or affect their salaries.

(Section 6.) All acts and parts of acts in conflict herewith are hereby repealed. [Approved March 10, 1915; Laws 1915, c. 144, p. 358.]

JUSTICES' COURTS.**§ 6286.**

Joinder of causes. See note post, § 7008.

The constitutional prohibition, that justices' courts shall have no equity jurisdiction, extends to those matters only of which

a court of equity has exclusive cognizance; interpleader by substitution of parties is permitted in courts proceeding according to the cause of the common law, and this permission extends to justices' courts. *Mettler v. Adamson*, 38 Mont. 198, 203, 99 Pac. 441.

A justice of the peace is not deprived of jurisdiction because the plaintiff frames his case on the theory of equitable relief, if it appears from his pleading that he is entitled to other relief. *Anderson v. Red Metal Min. Co.*, 36 Mont. 319, 93 Pac. 44.

The jurisdiction of a justice of the peace, in an action for a fine, penalty, or forfeiture, is not dependent upon the amount that the plaintiff might recover, but upon the amount that he demands; if he demands less than three hundred dollars, where the maximum penalty, if asked for, would be more than three hundred dollars, the justice has jurisdiction. *Reynolds v. Smith*, 48 Mont. 149, 151, 135 Pac. 1190.

If an action in a justice's court was, at its commencement, strictly a legal action, and different defendants have been properly substituted, they cannot deprive the justice's court of jurisdiction by interposing an equitable defense, such as fraud, which it cannot entertain. *Mettler v. Adamson*, 38 Mont. 198, 203, 99 Pac. 441.

In an action before a justice of the peace, on account, for labor performed, a proper substitution of parties defendant does not have the effect of converting the cause from a legal into an equitable action and of depriving the justice of jurisdiction to proceed. *Mettler v. Adamson*, 38 Mont. 198, 203, 99 Pac. 441.

COURTS AND JUDGES.

§ 6293. Courts of Record may Make Rules.

Every court of record may make rules not inconsistent with the laws of this state, for its own government and the government of its officers; but such rules must not impose any tax or charge upon any legal proceedings, or give any allowance to any officers for services. In case of the failure or refusal of any district court to adopt and promulgate rules of court, the supreme court may upon the application of any interested person, adopt and promulgate rules for the government of such court, and when adopted and promulgated such rules shall remain in full force and effect until modified or repealed by the authority adopting them. Any judge who shall fail or refuse to comply with and carry out in good faith the rules of court adopted by the supreme court, as herein provided for, shall be guilty of a contempt of the supreme court. [Amendment approved February 3, 1915; *Laws 1915*, p. 11.]

Apportionment of court business between judges. See note ante, § 6278.

Distribution of business. See note ante, § 6278.

Court rules, while effective as the expression of the will of the judges in office at the time of their promulgation, and binding upon them are not binding upon their successors. *State v. District Court*, 49 Mont. 158, 161, 141 Pac. 151.

Rules of court, when duly promulgated, have the force and effect of statutes within the territorial limits of the district, and are binding upon the judges of the court, as well as upon all other persons. *State v. District Court*, 49 Mont. 158, 161, 141 Pac. 151.

A justice's court has no equity jurisdiction, and the district court on appeal has the same extent of jurisdiction as the justice's court has. *Mettler v. Adamson*, 38 Mont. 198, 203, 99 Pac. 203.

Editorial Notes.

Amount claimed or amount due as determining jurisdiction of justice of the peace. *Ann. Cas.* 1912A, 1284.

§ 6288.

Cohabitation in state of fornication. See note post, § 8343.

Habeas corpus for one charged with grand larceny. See note post, § 9645.

A justice of the peace elected in one township has jurisdiction of an offense against local option committed in another township in the same county. *State v. O'Brien*, 35 Mont. 491, 90 Pac. 514.

Justices of the peace have exclusive jurisdiction of petit larceny. In *re Jones*, 46 Mont. 122, 125, 125 Pac. 929.

If one has been committed for grand larceny, a conclusion that he is not guilty of grand larceny necessarily carries the conclusion that there is a want of jurisdiction in the district court. In *re Jones*, 46 Mont. 122, 125, 126 Pac. 929.

A rule of court, assigning all of the criminal cases to one of the judges of a district court, will not preclude another judge of the same court from assuming jurisdiction of a criminal case. *State v. District Court*, 49 Mont. 158, 161, 141 Pac. 151.

A rule of the district court that agreements between attorneys, relating to causes pending, will be disregarded by the court, unless made in open court and entered in the minutes or reduced to writing, subscribed by the party, or his attorney, against whom they are urged, has no application to an executed oral agreement or stipulation admittedly entered into by an attorney; such agreement binds the attorney, though he is inclined to repudiate it, where the

client did not interfere nor dissent. *Bush v. Baker*, 46 Mont. 535, 546, 129 Pac. 550.

The rules of the supreme court adopted under the limitations prescribed by this section, have the force of statutes and are binding upon district courts and their officers in the matter of appellate procedure. *State v. Foster*, 36 Mont. 278, 281, 92 Pac. 761.

Though a district court rule provides that, if the appellant fails to file the transcript and papers in the district court within ten days after perfecting an appeal from a justice's court, such appeal shall be subject to dismissal, the provision indicated is not jurisdictional. *Bush v. Baker*, 46 Mont. 535, 546, 129 Pac. 550.

Editorial Notes.

Rules of court, authority to enact. 41 Am. St. Rep. 639.

Validity of court rule regulating right to jury trial. Ann. Cas. 1914B, 1184.

Validity of rule dispensing with introduction of evidence on point not disputed by parties. Ann. Cas. 1912D, 795.

§ 6296.

The prohibition of this section extends only to strictly judicial acts, and some of them are excepted; it does not prohibit the doing of a ministerial act, such as the pub-

lishing of an amendment to the state Constitution. *State v. Alderson*, 49 Mont. 387, 410, 142 Pac. 210.

Every holiday, including Sunday, is qualifiedly a nonjudicial day; but the prohibition of the statute extends only to strictly judicial acts, and some of them are excepted. *State v. Alderson*, 49 Mont. 387, 410, 142 Pac. 210.

§ 6302.

A district court has no more power to secure attendants than it has to secure rooms; it has no power to appoint an attendant, fix his compensation, and compel payment thereof out of the public funds, until after the sheriff has refused to perform the duties of court attendant, either in person or by deputy, as required by section 3026, ante, and until after the board of county commissioners has declined to furnish him with assistants sufficient for the transaction of business. *State v. Sullivan*, 48 Mont. 320, 331, 137 Pac. 392.

In determining whether a district judge has power to appoint attendants, sections 2894, 3010, 3026, ante, and this section, cannot be successfully assailed as invasions of the inherent power of the court, because the power of the court, as organized by the Constitution, did not include the right to appoint attendants, without prior recourse to the sheriff and to the county. *State v. Sullivan*, 48 Mont. 320, 329, 137 Pac. 392.

§ 6312. Judges Holding District Courts at the Request of Governor.

If for any cause a district court is not or cannot be held in any county by the judge or judges thereof, or by a district judge requested by such judge or judges to hold such court, or if the business of the court in any county is not or cannot be dispatched with reasonable promptness, the Governor, may upon application of any interested person, by an order in writing, require some district judge to hold court in said county for such time as may be specified in the order. [Amendment approved February 26, 1915; Laws 1915, p. 50.]

§ 6315. Cases in Which Judge may be Disqualified—Calling in Another Judge.

Any justice, judge or justice of the peace must not sit or act as such in any action or proceeding:

1. To which he is a party, or in which he is interested.
2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to rules of law.
3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order or decision appealed from.
4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge by reason of the bias or prejudice of such judge. Such affidavit may be made by any party to an action, motion or proceeding, personally, or by his attorney or agent, and shall be filed with the clerk of the district court in which the same may

be pending at any time before the day appointed or fixed for the hearing or trial of any such action, motion or proceeding. Upon the filing of the affidavit, the judge as to whom said disqualification is averred, shall be without authority to act further in the action, motion or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court, nor to the power of calling in another district judge to sit and act in such action or proceeding. No more than two judges can be disqualified for bias or prejudice, in said action or proceeding, at the instance of the plaintiff, and no more than two at the instance of the defendant in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding. If there be more than one judge in any judicial district in which said affidavit is made and filed, upon the first disqualification of a judge in the cause, another judge, residing in the judicial district wherein the affidavit is made and filed, must be called in to preside in such action, motion or proceeding; and upon the second or any subsequent disqualification of a judge in the cause, a district judge of another judicial district of the state must be called in to preside in such action, motion or proceeding, or in the action, motion or proceeding transferred to a district judge of another judicial district of the state. [Amendment approved March 8, 1909; Laws 1909, p. 161.]

Construed with other sections. See note post, § 7244.

This section should be liberally construed with a view to effect its object and promote justice. *Gehlert v. Quinn*, 38 Mont. 1, 98 Pac. 369.

The amendment made to this section by the laws of 1909, chapter 114, did not affect the relationship of the two statutes. *State v. District Court*, 49 Mont. 247, 249, 141 Pac. 659.

This section applies to all civil actions and special proceedings of a civil nature, including probate proceedings; a judge who files an order of distribution may be disqualified by the statutory affidavit, even after such filing. *State v. District Court*, 46 Mont. 492, 496, 128 Pac. 913.

Under this section, as amended in 1909, it is not necessary for the plaintiff, when he files a disqualifying affidavit, to secure a change of venue, to give notice to his adversary. *State v. District Court*, 49 Mont. 247, 249, 141 Pac. 659.

Under this section, as amended in 1909, a disqualified judge may invite a judge of another district to act in his stead, without first calling upon the judge or judges of his own district, in cases where his disqualification has not been shown by affidavit. *Curry v. McCaffery*, 47 Mont. 191, 195, 131 Pac. 673.

Under this section, as amended in 1909, the affidavit of disqualification must be filed before the day originally fixed for the hearing; it cannot be filed during a continuance of the case. *State v. District Court*, 48 Mont. 410, 415, 138 Pac. 770.

Under this section, as amended in 1909, the filing of the affidavit mentioned therein, prior to the day set for the trial, or the hearing of the motion or proceeding, ipso facto works a disqualification of the judge against whom it is directed; and thereafter, he has no power to act further in such action or proceeding than to arrange his calendar, to regulate the order of business, to order a transfer to some other court, or to call another judge to preside in his stead. *State v. District Court*, 46 Mont. 492, 494, 128 Pac. 913.

When a right is conferred by statute, it is entitled to judicial recognition, which cannot be withheld, nor the right abridged because it is subject to abuse; the fourth subdivision of this section, as amended, is such a statute and confers such a right. *State (ex rel. Carroll) v. District Court*, 50 Mont. 506, 148 Pac. 312.

Under this section, as amended in 1909, a defendant who is in default is a "party," entitled to move to set aside the default; and, pending such a motion, he is entitled to file an affidavit disqualifying the judge; if such an affidavit is filed, the court is divested of all power to act with reference to the motion. *State (ex rel. Working) v. District Court*, 50 Mont. 435, 147 Pac. 614.

Under section 6698, post, an action must be pending before a receiver can be appointed; and the appointment of a receiver does not terminate the action in which he was appointed; the receiver in such action cannot file a disqualifying affidavit under this section, 6315, as amended in 1909, but the defendant may do so, and, if he does so, the judge's order, subsequently made, suspending the receiver, is unauthorized.

State (ex rel. First Trust & Sav. Bank) v. District Court, 50 Mont. 259, 146 Pac. 539.

Where a guardianship proceeding was transferred from one judge to another, and a petition for restoration to competency was then filed, the guardian was a party, under section 7767, post; and, under the fourth subdivision of this section, was entitled to file an affidavit disqualifying the second judge for bias; hence, it was an abuse of discretion for the court, in its order fixing a day for the hearing, to direct that service be made "at some time prior" to the date fixed, which service was made, but so late, and at such an hour of the night, as to deprive the guardian of his right; such orders will be annulled by the supreme court. State (ex rel. Carroll) v. District Court, 50 Mont. 510, 148 Pac. 312, 314.

Where a disqualifying affidavit is filed, after a motion to strike portions of the pleading has been taken under advisement, the jurisdiction of the court over the cause, for the time being at least, ceases after overruling the motion. State v. District Court, 37 Mont. 597, 97 Pac. 1032.

A disqualification of the presiding judge is wrought by the filing of an affidavit, imputing bias and prejudice to him, at any time before the day fixed for the hearing; the imputation may be made in the language of the statute, and proof of facts showing actual bias and prejudice is not required nor permitted. State v. District Court, 44 Mont. 72, 75, 119 Pac. 174.

The date of the disqualifying affidavit is of no consequence; it is the filing of it which, ipso facto, works the disqualification of the judge. State v. District Court, 49 Mont. 247, 251, 141 Pac. 659.

Actual disqualification on the part of a judge may be manifested at any time after, as well as before, the date fixed for a hearing, and it is therefore available in probate proceedings wherever it is made to appear; but the privilege to impute bias to a judge, where none may exist, may fairly be limited to a given time. State v. District Court, 48 Mont. 410, 415, 138 Pac. 770.

In a probate proceeding, the jurisdiction continues until the whole proceeding is disposed of by some final action by the judge, releasing the parties and their property from the control of the court; and, until such final action, the judge may be disqualified by the statutory affidavit. State v. District Court, 46 Mont. 492, 496, 128 Pac. 913.

Ordinarily, a decree of distribution is the final disposition of the administration, except the formal discharge of the administrator; but, when a proceeding for partition has been instituted, the decree of distribution, though final in form, performs only the office of ascertaining definitely who are entitled to the succession and the interest of each distributee, the vesting of title in the allottees, the assignee or purchaser, as the case may be, being left in

abeyance until the confirmation of the report of the commissioners, appointed as provided in section 7679, post. State v. District Court, 46 Mont. 492, 496, 128 Pac. 913.

When a district court is divided into departments, a judge of one of them may, upon the disqualifying affidavit being filed, properly call in a judge from another district, without first calling upon one of the judges of his own court, to preside. Gassert v. Strong, 38 Mont. 18, 30, 98 Pac. 497.

A judge called in to sit in another's place has the same powers as the latter. Hill v. Nelson Coal Co., 40 Mont. 1, 5, 104 Pac. 876.

The disqualification of a trial judge, for imputed bias, is waived if no affidavit of disqualification is made within the time prescribed. State v. District Court, 48 Mont. 410, 415, 138 Pac. 770.

The filing of the affidavit mentioned in the fourth subdivision of this section ipso facto works a disqualification of the judge against whom it is directed, unless the party filing it has waived his statutory right to do so. Washoe Copper Co. v. Hickey, 46 Mont. 363, 364, 128 Pac. 584.

If a disqualifying affidavit is filed against the judge who is presiding in a cause, and, by agreement of the respective counsel, a designated judge is called in to try the case, the action of counsel constitutes a waiver of the right of either to afterward disqualify the judge so called in by stipulation. Washoe Copper Co. v. Hickey, 46 Mont. 363, 366, 128 Pac. 584.

A waiver of the right conferred upon the parties to an action or proceeding, by the fourth subdivision of this section, to disqualify a district judge, by the filing of an affidavit of the character mentioned therein, is not contrary to public policy. Washoe Copper Co. v. Hickey, 46 Mont. 363, 366, 128 Pac. 584.

In providing for the disqualification of a judge by the affidavit of a party to a cause coming before him the statute (Rev. Codes, sec. 6315, as here amended) was not intended to encourage perjury, or aid delays, or to secure undeserved postponements. The affidavit cannot be filed, so as to be efficacious, after the day for hearing has arrived. State ex rel. Jacobs v. District Court, 48 Mont. 410, 414 et seq., 138 Pac. 1091.

A right may be conferred by statute, and when so conferred is entitled to judicial recognition, and such recognition cannot be withheld and the right abridged on the ground that it is subject to abuse. State ex rel. Carroll v. District Court, 50 Mont. 508, 148 Pac. 312.

The disqualifying affidavit is self-acting; the judge against whom it is directed is not permitted to stop to consider its sufficiency, but must respond to its purpose immediately upon its being filed, if filed before

the day set for trial. *State v. District Court*, 46 Mont. 492, 494, 128 Pac. 913.

The filing of the affidavit here provided for brings on the only situation in which a trial judge, disqualified to sit, must call in a fellow judge of his district rather than a judge from outside. *Curry v. McCaffery*, 47 Mont. 195, 131 Pac. 673.

Upon filing the affidavit, the judge as to whom the disqualification is averred shall be without authority to act further in the action, motion or proceeding, except to arrange the calendar, regulate the order of business, transfer the case to another court, or call in another judge to act. A corporation against which proceedings have been instituted for the appointment of a receiver may avail itself of the statute. *State ex rel. First Trust & Savings Bank v. District Court*, 50 Mont. 261, 146 Pac. 539.

For most purposes, a party by suffering a default ceases to be a "party," and has no standing in court except to move for relief from the default or to take and prosecute an appeal. For the purpose of a motion in this behalf, however, he is a party, and pro hac vice has all the rights of a party. Under the statute a party has the right to challenge the presiding judge by imputing to him bias and prejudice. *State ex rel. Working v. District Court*, 50 Mont. 439, 147 Pac. 614.

Editorial Notes.

Disqualified judges, validity of judgment rendered by. 85 Am. Dec. 126.

Disqualified or unauthorized judges, agreements to try causes before, when invalid. 25 Am. Rep. 539.

Waiver of objection to disqualified judge. Ann. Cas. 1912A, 1072; 10 Ann. Cas. 969.

Power of disqualified judge to make formal orders or to perform ministerial acts. 5 Ann. Cas. 975.

Disqualification of judge who is resident or taxpayer in municipality which is party to proceedings before him. 6 Ann. Cas. 406.

Statutory disqualification of judge from having been counsel in the cause. 25 L. R. A. (N. S.) 114.

Construction of word "party" in statute disqualifying the judge related to party. Ann. Cas. 1914C, 972.

Disqualification of judge to act in probate matter because of interest in estate. Ann. Cas. 1912C, 1165.

§ 6324.

Where a petition for the restoration of an incompetent person to capacity has been denied by one department of the district court, this section forbids an application to another department of the same court for the release of the incompetent on habeas corpus proceedings; a due sense of propriety alone ought to be sufficient to stay interference by the other department. *State (ex rel. Carroll) v. District Court*, 50 Mont. 428, 147 Pac. 612.

§ 6329.

Applied to record on appeal in an election contest. See note post, § 7248.

A decree for separate maintenance recovered by a married woman may be enforced by execution. *Raymond v. Blancgrass*, 36 Mont. 449, 458, 15 L. R. A. (N. S.) 976, 93 Pac. 648.

JURY.

§ 6356. Summon of Jurors by Sheriff.

The sheriff as soon as he receives the list or lists of jurors drawn, shall summon the persons named therein to attend the court at the time mentioned in the order by a written notice by registered mail to that effect addressed to him to the postoffice address named in the jury list and deposited in the postoffice with the postage thereon prepaid, except in cases where the district judge expressly directs that such service shall be made by giving personal notice, and shall return the list to the court at the opening of the regular session thereof, or at such session or time as the jurors may be ordered to attend, specifying the names of those who are summoned and the manner in which each person was notified. [Amendment approved February 6, 1911; Laws 1911, p. 12.]

This section, as amended, prescribes the duty of the sheriff, and directs him, as to the procedure, in summoning a jury panel. *State v. Groom*, 49 Mont. 354, 357, 141 Pac. 858.

§ 6362.

Status of policeman as an officer. See note ante, § 3250.

§ 6367.

Apportionment of court business between judges. See note ante, § 6278.

STENOGRAPHERS.**§ 6378. Court Stenographers—Salary and Mileage.**

Every stenographer appointed under the provisions of this title receives an annual salary of twenty-four hundred dollars, and no other compensation except as provided in section 6376 of the Revised Codes of Montana of 1907, payable in monthly installments out of the contingent funds of the counties comprising the district for which he is appointed, according and in proportion to the number of suits entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon after as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The stenographer is allowed in addition to the salary and fees above provided, in judicial districts comprising more than one county, a mileage of ten cents per mile for the distance traveled by him from one county seat to another in the performance of his official duties, said mileage to be apportioned and payable in the same way as the salary. [Amendment approved March 4, 1909; Laws 1909, p. 109.]

ATTORNEYS.**§ 6382. Qualifications, Examination and Admission.**

Every applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character and a certificate of one or more reputable counselors at law that he has been engaged in the study of law for two successive years prior to the making of such application, and undergo a strict examination as to his qualifications by any one or more of the justices of the supreme court. The form and manner of the examination shall be as the justices may, from time to time, determine; provided, however, that a diploma from the department of law of the University of Montana at Missoula, or evidence of having completed the course in law of three years of said department, shall entitle the holder to a license to practice law in all the courts of this state, subject to the right of the chief justice of the supreme court of the state to order an examination as in ordinary cases of applicants without such diploma or evidence. [Amendment approved February 18, 1915; Laws 1915, p. 28.]

§ 6384.

Removal of town officer, who is an attorney. See note ante, § 3236.

§ 6385. Admission of Attorneys from Other States.

Every citizen of the United States, or person resident of this state, who has bona fide declared his or her intention to become a citizen in the manner required by law, who has been admitted to practice law in the highest courts of another state, or of a foreign country, where the common law of England constitutes the basis of jurisprudence, may be admitted to practice in the courts of this state, upon the production of his or her license, and satisfactory evidence of good moral character; but the court may examine the applicant as to his or her qualifications. Provided, however, that any person who is a nonresident of the state of Montana and who has been admitted and is at the time authorized to practice law in the highest courts of another state, or of a foreign country may, upon motion of any attorney

admitted to practice in the courts of this state, be permitted by the court to appear as attorney in any action or proceeding in such court and shall when so permitted be entitled to the same rights and privileges and be subject to the same duties and obligations with respect to such actions or proceedings as an attorney duly admitted to practice in the courts of this state. [Amendment approved February 9, 1911; Laws 1911, p. 17.]

§ 6388.

Acts constituting contempt. See note post, § 7309.

A person who advises clients in legal matters pending or to be brought before a court of record, or in preparing pleadings

or proceedings for use in a court of record, either directly or by a partner or proxy, is practicing law in a court of record; and, if he has no license to do so, he is guilty of contempt of court. In re Bailey, 50 Mont. 365, 146 Pac. 1101.

§ 6389. **Authority of Attorney.**

An attorney and counselor has authority:

1. To bind his client in any steps of an action or proceeding by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise.

2. To receive money claimed by his client in an action or proceeding during the pendency thereof, or after judgment unless a revocation of his authority is filed; and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

3. The death of a party to an action or proceeding does not revoke the authority of his attorney of record in said action or proceeding, but the authority of the attorney is continued in all respects the same and with like effect as it was prior to the death of such party, until such attorney shall withdraw his appearance in said action or proceeding, or some other attorney shall be substituted for him, or his authority shall be otherwise terminated and entry thereof made to appear in the record of such action or proceeding. [Amendment approved February 26, 1915; Laws 1915, p. 52.]

An attorney may bind his client to try a case before a particular judge. See note ante, § 6315.

Rules of court. See ante, § 6293.

This section does not prevent a court from enforcing an executed oral agreement entered into by an attorney. *Bush v. Baker*, 46 Mont. 535, 546, 129 Pac. 550.

Editorial Notes.

Presumption in favor of authority of attorney. 16 Am. Dec. 98.

Authority of the former to bind the latter. 76 Am. Dec. 256; 30 Am. Rep. 358.

Rights and powers of respectively to manage the action. 87 Am. Dec. 166.

Attorney and client, authority of attorney to satisfy judgment on payment of a sum less than that due. 41 Am. Rep. 847.

Right of attorney to appear for the party whom he assumes to represent, presumption of such authority, and methods of questioning. 126 Am. St. Rep. 33.

Control of cause, extent to which client may exercise. 93 Am. St. Rep. 169.

Implied authority of attorney in conducting litigation. 132 Am. St. Rep. 148.

Authority of attorney to incur expenses incident to suit for client. Ann. Cas. 1912D, 313.

Power of attorney having claim for collection to extend time of payment. Ann. Cas. 1913B, 1295.

Implied power of attorney to bind client for expenses incidental to trial including associate counsel fees. 23 L. R. A. (N. S.) 702.

Implied power of attorney to compromise cause of action. 31 L. R. A. (N. S.) 523.

Power of attorney to withdraw answer. 33 L. R. A. 515.

Authority of attorney to confess or consent to entry of judgment. Ann. Cas. 1914C, 548.

§ 6393.

Proceedings for removal or suspension. See note post, § 6410.

The crime of forgery involves "moral turpitude" within the meaning of the fifth

subdivision of this section. *In re Sutton*, 50 Mont. 88, 145 Pac. 6.

Editorial Notes.

Offering to pay witness as a ground for disbarment or suspension of attorney. L. R. A. 1915A, 514.

Disbarment of attorneys, causes and proceedings therefor, and the power of courts to disbar. 95 Am. Dec. 333; 45 Am. St. Rep. 71.

Disbarment, crimes and other misconduct which are causes for. 42 Am. Rep. 557.

Disbarment of attorneys by the courts as the result of summary proceedings 2 Am. St. Rep. 850.

Disbarment of attorneys for criminal acts in advance of their conviction. 114 Am. St. Rep. 839; 8 Ann. Cas. 847.

Reinstatement of disbarred attorney. Ann. Cas. 1912A, 813.

Right to jury trial in disbarment proceeding. Ann. Cas. 1913D, 1162.

Disbarment of attorney, for act committed in another jurisdiction. 17 Ann. Cas. 599.

Wrongful retention of money by attorney as ground for disbarment. 17 Ann. Cas. 692.

Disbarment of attorney for fraud in procuring license to practice. 20 Ann. Cas. 212.

Disbarment for withholding client's money or property. 19 L. R. A. (N. S.) 401,

Disbarment for acting for party adverse to former client. Ann. Cas. 1912B, 214.

§ 6410.

When a certified copy of the record of the conviction of an attorney at law is lodged with the clerk of the supreme court,

the duty of that court is to proceed, under this section, to disbar him; under section 6393, ante, such certified copy is made conclusive evidence, and the court has no discretion in the matter; the convicted attorney is not entitled to notice by citation or other process; it is his bounden duty to know that the legal consequence of his final conviction is his disbarment. *In re Sutton*, 50 Mont. 88, 145 Pac. 6.

§ 6422.

The purpose of this section is to protect attorneys from secret settlements with their clients whereby the attorneys would be defrauded of their fees; thus, if an action involving property rights is compromised, and the attorney of one of the parties is to be paid a large amount of money in five installments, to be paid into a certain bank, all papers and documents pertaining to the transaction to be placed in escrow and delivered to the purchasers of the property involved, on payment of the last installment, the attorney has a lien on the papers and documents in the bank, which must be recognized, and he cannot be defrauded of his fees by a secret payment, without his knowledge or consent, of the last installment to his client, then living in another state. *Walsh v. Hoskins*, 46 Mont. 356, 128 Pac. 589.

Editorial Notes.

Lien of attorney for compensation and costs. 31 Am. Dec. 755.

Lien of attorneys. 51 Am. St. Rep. 251.

Voluntary withdrawal by attorney from action as forfeiting his lien. Ann. Cas. 1913E, 540.

Effect on attorney's lien of collusive settlement after verdict. Ann. Cas. 1913E, 646.

Assignment of judgment as affecting attorney's lien thereon. 37 L. R. A. (N. S.) 226.

ACTIONS.

§ 6425.

While courts recognize the principles applicable to the different actions, particular forms for which were required at common law, they do not recognize the distinct

forms for such actions. *Donovan v. McDevitt*, 36 Mont. 65, 92 Pac. 49.

Distinct forms of action are not recognized; the statute has abolished them. *Logan v. Billings & N. R. R. Co.*, 40 Mont. 467, 470, 107 Pac. 415.

STATUTE OF LIMITATIONS.

§ 6432.

A public highway may be established by prescription, without color of title, by proof of travel over it by the public, as a public highway, for the statutory period. *Lockey v. City of Bozeman*, 42 Mont. 387, 396, 113 Pac. 286.

§ 6435.

Proof of establishment of highway by prescription overcomes the presumption

which would otherwise prevail; namely, that the use, by the public, has been in subordination to the legal title. *Lockey v. City of Bozeman*, 42 Mont. 387, 396, 113 Pac. 286.

§ 6436.

"Color of title" and "claim of title" are not synonymous; in this section, "claim of title" is used for "color of title"; this section and section 6437, post, treat of adverse possession under "color of title," as that

term should be used. *Morrison v. Linn*, 50 Mont. 396, 147 Pac. 166.

As used to characterize adverse possession, "claim of title" means nothing more than the claim asserted by the disseisor of his intention to appropriate and use the land in question as his own, to the exclusion of the rights of all persons, and that, too, irrespective of any semblance of color, or right, or title, as the foundation of his claim. *Morrison v. Linn*, 50 Mont. 396, 147 Pac. 166.

While the adverse claimant under "color of title" for the statutory period obtains title to the entire tract described in his muniment, if it has been subjected to proper use, the one who relies upon "claim of title" secures only so much as he actually possesses; there cannot be constructive possession under mere "claim of title." *Morrison v. Linn*, 50 Mont. 396, 147 Pac. 166.

One who holds land under a written instrument, a statute, or a judgment or decree of court, which appears to convey or confirm title but does not do so in fact, holds under "color of title." *Morrison v. Linn*, 50 Mont. 396, 147 Pac. 166.

Editorial Notes.

Possession with, or without, "color of title." 1 R. C. L. 726.

Color of title sufficient to sustain adverse possession, what amounts to. 14 Am. Dec. 580; 88 Am. St. Rep. 701.

Color of title, whether necessary. 14 Am. Dec. 764.

Sufficiency of unrecorded deed to give color of title. 1 Ann. Cas. 761.

Adverse possession of part of a parcel, when extends to the whole. 12 Am. Dec. 357.

Possession of part as possession of the whole. 125 Am. St. Rep. 302.

Acquisition of title to part of building by adverse possession. 12 Ann. Cas. 870.

§ 6438.

Distinctions. See note ante, § 6436.

It is not necessary that an adverse occupant's entry into possession be made under pretense of right or title; a naked trespass may initiate the claim of an adverse occupant to title by adverse possession. *Morrison v. Linn*, 50 Mont. 396, 147 Pac. 166.

§ 6439.

Distinctions. See note ante, § 6436.

Editorial Notes.

Adverse possession by tenant against his landlord. 89 Am. St. Rep. 87, 53 L. R. A. 941.

§ 6445.

Action on county treasurer's bond. See note post, § 6449.

This section is not applicable to an action against a city treasurer who fails to turn over interest on public moneys received by him. *City of Butte v. Goodwin*, 47 Mont. 155, 165, Ann. Cas. 1914C, 1012, 134 Pac. 670.

A party may waive the benefit of the statute of limitations, before or after the expiration of the prescribed limit, not only by either of the acts mentioned in section 6472, post, but also by express agreement based upon a consideration, though made contemporaneously with, and as a part of, the principal agreement or obligation out of which the action has arisen. *Parchen v. Chessman*, 49 Mont. 326, 335, 143 Pac. 631.

Editorial Notes.

Liability of a public officer for interest received on public funds. Ann. Cas. 1914C, 1016.

§ 6446.

Recording of instrument as notice sufficient to start the statute of limitations. See note post, § 6575.

An action upon an "obligation" is not within this section; it falls within section 6447, post. *Schaeffer v. Miller*, 41 Mont. 417, 425, 137 Am. St. Rep. 746, 109 Pac. 970.

§ 6447.

Action on county treasurer's bond. See note post, § 6449.

Bond, and liability of city treasurer for interest received. See note ante, § 3238.

An action against a party for money which he, *ex aequo et bono*, ought to refund, is one upon an "obligation," and is barred unless commenced within three years from the time the cause of action accrues. *Schaeffer v. Miller*, 41 Mont. 417, 425, 137 Am. St. Rep. 746, 109 Pac. 970.

A city treasurer who fails to turn over interest received by him on public funds is guilty of a breach of his implied promise, as trustee of such funds to do so; his duty does not depend upon his bond, but upon his implied promise to do that which, in equity and good conscience, he ought to do. *City of Butte v. Goodwin*, 47 Mont. 155, 166, Ann. Cas. 1914C, 1012, 134 Pac. 670.

Editorial Notes.

Liability of a public officer for interest received on public funds. Ann. Cas. 1914C, 1016.

§ 6449.

Bond, and liability of city treasurer for interest received. See note ante, § 3238.

The first subdivision of this section does not apply to an action against a city treasurer to recover interest received by him on deposits of city funds that he has

failed to turn over to his principal. *City of Butte v. Goodwin*, 47 Mont. 155, 164, Ann. Cas. 1914C, 1012, 134 Pac. 670.

Under the first subdivision of this section, an action on the official bond of a county treasurer is barred, both as to him and his surety, in two years after the cause of action shall have accrued; the action is one on a "liability created by statute" and not one on a liability "founded on an instrument in writing," under section 6445, ante. *Gallatin County v. United States F. & G. Co.*, 50 Mont. 55, 144 Pac. 1085.

A mere delay in commencing suit, short of the period of limitation, need not be excused in the complaint. *Brundy v. Canby*, 50 Mont. 454, 148 Pac. 315.

An action under section 5248, ante, for personal injuries, founded upon actionable negligence, is not an action on a "liability created by statute," in the sense in which those words are used in this section; hence, such an action is not barred in two years. *Beeler v. Butte etc. Development Co.*, 41 Mont. 465, 473, 110 Pac. 528.

Editorial Notes.

Liability of a public officer for interest received on public funds. Ann. Cas. 1914C, 1016.

§ 6450.

The fourth subdivision of this section has no reference to a cause of action arising out of a carrier's negligence in the transportation of livestock. *Heitman v. Chicago etc. Ry. Co.*, 45 Mont. 406, 412, 123 Pac. 401.

Editorial Notes.

Liability of a public officer for interest received on public funds. Ann. Cas. 1914C, 1016.

§ 6451.

Laches, by discharged policeman, in applying for reinstatement. See note ante, § 3306.

This section does not apply to a suit to have the executors and heirs of the plaintiff's co-owner in a mining claim declared trustees for his benefit. *Delmoe v. Long*, 35 Mont. 156, 88 Pac. 778.

This is the only statute of limitations applicable to mandamus proceedings; but, notwithstanding this provision, the courts may, in their discretion, deny relief where there has been a long delay in applying for it, in the absence of excuse or explanation. *State v. Duncan*, 47 Mont. 447, 451, 133 Pac. 109.

Applied to an action to recover land claimed by the plaintiff to have been rightfully entered by him under the public land laws of the United States, but which he claimed had been wrongfully patented to a railway company under its land grant, where he did not commence suit until fifteen years after patent to the railway com-

pany. *Kimes v. Northern Pac. Ry. Co.*, 49 Mont. 573, 575, 144 Pac. 156.

Notwithstanding this section and section 6476, post, a court may, in its discretion, deny an application for a writ of mandamus, where there has been a long delay in making it, in the absence of excuse or explanation; but the court may let the writ go, where the delay has not prejudiced the rights of the adverse party, and there is no impropriety in issuing it. *State v. Edwards*, 40 Mont. 287, 319, 20 Ann. Cas. 239, 106 Pac. 695.

Specific performance of an oral contract for the sale of real estate may be decreed where possession thereunder, taken by the vendee with the vendor's knowledge or consent, is followed by improvement of the property, even though no part of the purchase price has been paid; in such a case, where the payment and conveyance are to be concurrent acts, and the vendee has been ready to pay, the vendor stands in the same position as if payment had been made; he holds the legal title in trust for the vendee; and the statute of limitations does not run against the action for specific performance, until the vendor has, in some manner, disavowed his trust. *Wright v. Brooks*, 47 Mont. 99, 108, 130 Pac. 968.

A vendee in possession cannot be barred from specific performance by mere delay, however long, because his possession is a continued assertion of his claim; he may rest in security until his title or right of possession is attacked. *Wright v. Brooks*, 47 Mont. 99, 109, 130 Pac. 968.

§ 6457.

An action is "commenced," within the meaning of this section, and the operation of the statute of limitations is thereby arrested, though a general demurrer is sustained to the complaint, if the pleading is sufficiently substantial to allow of its being properly amended, so as to fully state the same cause of action attempted to be stated in the first instance. *Clark v. Oregon Short Line R. R. Co.*, 38 Mont. 177, 188, 99 Pac. 298.

An amendment, properly allowed, relates back to the date of the original pleading or process. *Clark v. Oregon Short Line R. R. Co.*, 38 Mont. 177, 187, 99 Pac. 298.

Editorial Notes.

What is commencement of action. 15 Am. Dec. 344.

§ 6458.

Right to discriminate in enacting statutes of limitation. See note ante, § 4835.

Time limited for commencing criminal actions. See note post, § 9029.

This section is not to be strictly construed, so as to prevent the effective prosecution of a cause of action. *Smith v. Smith*, 210 Fed. 947, 954.

The legislative intent with respect to the statute of limitations is to suspend the statute, whenever the absence of a party defendant from the state prevents the effective prosecution of a cause of action; hence, absence from the state, of a debtor's personal representative, after the death of the debtor, suspends the running of limitations. *Smith v. Smith*, 210 Fed. 947, 953.

Editorial Notes.

Absence from the state forms no exception unless expressed. 13 Am. Dec. 368.

Exceptions in statute of limitations as to time defendant is absent from state as applicable to nonresidence at time of accrual of action. Ann. Cas. 1912D, 467.

What constitutes "residence out of the state" within meaning of statute. 17 L. R. A. 225.

Applicability to nonresidents of provision suspending limitations against defendant who is out of state until "his return." 25 L. R. A. (N. S.) 24.

§ 6464.

A plaintiff is entitled to the benefit of this section, where he dismisses his action without prejudice and commences a new one within one year after such dismissal. *Peterson v. City of Butte*, 44 Mont. 134, 136, 120 Pac. 231.

If an action is dismissed without prejudice, and, on the same day, a new action is brought, which results in a judgment of nonsuit, on motion of the defendant, and, within one year from such judgment of nonsuit, a third action is brought for the same cause, it is within time, and a denial of the defendant's motion to dismiss the action on the ground that it is barred by any statute of limitations is proper. *Wilson v. Norris*, 43 Mont. 454, 457, 117 Pac. 100.

§ 6468.

An instruction to the jury, in replevin, to recover jewelry, to the effect that the action is barred if they believe that the defendant has been in the possession and claimed to be the owner of the property, as against the plaintiff, for over two years prior to the commencement of the action, is erroneous in omitting all reference to the plaintiff's knowledge or want of knowledge of the defendant's claim. *Woods v. Latta*, 35 Mont. 9, 21, 88 Pac. 402.

§ 6472.

Waiver of statute of limitations. See note ante, § 6181.

Part payment renews a note. *Parchen v. Chessman*, 49 Mont. 326, 334, 143 Pac. 631.

Letters referring to and acknowledging an entire indebtedness, with a promise to pay, will take the debt out of the statute of limitations. *Galvin v. O'Gorman*, 40 Mont. 391, 397, 106 Pac. 887.

One joint debtor cannot, by making part payments, suspend the running of the statute of limitations as to his joint obligors, who do not authorize or ratify his act; and the provision of the fifth subdivision of section 7887, post, that evidence may be given of the act or declaration of a "joint debtor, or other person jointly interested with the party," does not militate against this rule. *Monidah Trust v. Kemper*, 44 Mont. 1, Ann. Cas. 1912D, 1326, 118 Pac. 811.

Editorial Notes.

Part payment, by joint debtor, as suspending the running of the statute of limitations as to joint obligors not authorizing or ratifying such act. Ann. Cas. 1912D, 1328.

Acknowledgment of debts barred by statute. 8 Am. Dec. 162.

New promise by a joint debtor. 10 Am. Dec. 695.

Acknowledgment, what sufficient to remove. 23 Am. Dec. 588; 38 Am. St. Rep. 737.

New promise, indefinite acknowledgment of indebtedness. 29 Am. Dec. 467.

Acknowledgment or payment by one joint or joint and several promisor. 51 Am. Dec. 330.

Promise or acknowledgment to take debt out of the statute of limitations. 62 Am. Dec. 101; 35 Am. Rep. 417; 102 Am. St. Rep. 751.

Acknowledgment or new promise, payment of dividend by assignee of insolvent debtor does not amount to. 52 Am. Rep. 401.

Limitation of actions, acknowledgment, made by stranger. 57 Am. Rep. 334.

New promise, from what inferable. 58 Am. Rep. 749.

Part payment by joint debtor as suspending running of statute of limitations as to joint obligors not authorizing or ratifying such act. Ann. Cas. 1912D, 1328.

Indorsement of payment on promissory note by holder as sufficient proof of part payment to stop running of statute of limitations. Ann. Cas. 1913A, 1223.

Giving check, bill, note, etc., as part payment or collateral security, as starting statute of limitations running anew. 15 Ann. Cas. 332.

Necessity that new promise to remove bar of statute of limitations should be definite as to particular debt in question. Ann. Cas. 1914B, 223.

Person to whom acknowledgment or new promise must be made to toll the statute or remove the bar. 25 L. R. A. (N. S.) 805; 33 L. R. A. (N. S.) 262.

§ 6475.

Section does not apply in suits for divorce. See note ante, § 3670.

Waiver of defense of statute of limitations. See note ante, § 6181.

Applied to an action for the reformation of a deed on the ground of mistake. *American Min. Co., v. Basin & Bay State Min. Co.* 39 Mont. 476, 481, 24 L. R. A. (N. S.) 305, 104 Pac. 525.

The bar of the statute of limitations can be raised only by answer; if not interposed in that way, such defense is waived. *State v. District Court*, 38 Mont. 415, 417, 100 Pac. 207.

The party against whom a cause of action is alleged has the privilege to avail

himself of the protection of this section or to forbear it; but, if he fails to invoke a defense, open to him, at the proper time and in the proper way, it does not avail him under any circumstances, even though it appears incidentally that the cause of action alleged against him is completely barred; it is of no concern to the court or to the public that this is so, whether the omission is the result of oversight or of a prior agreement with the adversary party. *Parchen v. Chessman*, 49 Mont. 326, 334, 142 Pac. 631.

§ 6476.

Mandamus as a special proceeding. See note ante, § 3306.

An application for a writ of mandate to compel the reinstatement of a discharged policeman is a special proceeding of a civil nature. *State v. Duncan*, 47 Mont. 447, 451, 133 Pac. 109.

PARTIES.

§ 6477.

Actions by partners. See note ante, § 5505.

While a landlord has a right of action against a third person for a permanent injury to the reversion, the right of action for a trespass upon the possession of the tenant, or for an injury to his estate, is in the tenant; but, for a wrong that affects both of these distinct interests, the law gives a right of action to the owner of each. *Custer Con. Mines Co. v. Helena*, 45 Mont. 146, 153, 122 Pac. 567.

Editorial Notes.

Who is real party in interest within meaning of statutes defining parties by whom action must be brought. 64 L. R. A. 581.

§ 6481.

Vacation of decree of divorce against insane husband. See note post, § 6589.

Under this section, a minor child, by his guardian ad litem, may maintain an action for personal injuries; the provisions of section 6485, post, are not exclusive. *Flaherty v. Butte Electric Ry. Co.*, 40 Mont. 454, 460, 135 Am. St. Rep. 630, 107 Pac. 416.

The court has no jurisdiction to appoint a guardian ad litem for an incompetent defendant until he has been brought into court by personal service of summons. *State v. District Court*, 38 Mont. 166, 170, 129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

An incompetent, whether plaintiff or defendant, must appear either by his general guardian, or, in case he has none, or the guardian fails or refuses to appear, by a guardian ad litem appointed by the court. *State v. District Court*, 38 Mont. 166, 174,

129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

Whether the appointment of a guardian ad litem for an insane person is requested, the court has a discretion in the selection of the person to represent him, but its discretion does not extend to a refusal in limine to make the appointment and to assume jurisdiction, when a prima facie right to prosecute the action is made to appear. *State v. District Court*, 38 Mont. 166, 175, 129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

Where minors bring an action by their guardian, the action is not by the guardian, but by the minors, who are required to appear through or by a guardian; and any objection to the capacity of the minors to sue, if not taken as prescribed in section 6539, post, is deemed waived. *O'Donnell v. City of Butte*, 44 Mont. 97, 98, 119 Pac. 281.

Where the daughter of an insane father, as his next friend files a complaint and demands judgment that a decree of divorce granted to the wife of the incompetent be set aside, because personal service of summons was not had upon him, and asks that the court appoint a guardian ad litem to prosecute the action, his general guardian having refused to act, the court should make the appointment; and it is an arbitrary abuse of discretion to refuse to do so. *State v. District Court*, 38 Mont. 166, 175, 129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

An infant, appearing in a suit by guardian appointed as provided in the next section, cannot complain of errors occurring at the trial, not affecting his substantial rights, where he was represented by able and experienced counsel, and no fraud or collusion appears. *Byrnes v. Butte Brewing Co.*, 44 Mont. 328, 337, Ann. Cas. 1913B, 440, 119 Pac. 788.

Editorial Notes.

Right of infant to complain, in the appellate court, of errors not objected to in the trial court. *Ann. Cas.* 1913B, 443.

Guardian ad litem, rights, powers and duties of. 97 *Am. St. Rep.* 995; 16 *L. R. A.* 507.

Necessity for appointment of guardian ad litem when infant defendant has general or natural guardian. *Ann. Cas.* 1912D, 363.

§ 6482.

Infant cannot complain of errors, when. See note ante, § 6481.

A guardian ad litem is appointed upon the application of a friend or relative, or of a party to the action; in all cases, where the incompetent is plaintiff, the application, it is apprehended, should be made by a relative or friends. *State v. District Court*, 38 *Mont.* 166, 174, 129 *Am. St. Rep.* 636, 35 *L. R. A.* (N. S.) 1098, 99 *Pac.* 291.

§ 6485.

The provisions of this section are not exclusive; the minor may proceed under section 6481, ante, and sue by his guardian ad litem. *Flaherty v. Butte Electric Ry. Co.*, 40 *Mont.* 454, 460, 135 *Am. St. Rep.* 630, 107 *Pac.* 416.

In so far as this section authorizes a guardian to prosecute an action for injury to his ward, it relates only to such an action as the minor has during his lifetime; in case of the death of the minor from such injury, his right of action survives, and is to be maintained, by his personal representative, under the authority of section 6494, post. *Melzner v. Northern Pac. Ry. Co.*, 46 *Mont.* 162, 176, 127 *Pac.* 146.

If a parent, who is a poor person and unable to support himself by work, brings an action for the death of his minor child, under this section, he may, by virtue of section 6486, post, recover such damages as, under all the circumstances, may be just; and such damages may include pecuniary benefits reasonably to be expected to be received from the deceased after his majority, it being the duty of the child of such a person, under section 3751, ante, to support the parent. *Gilman v. The G. W. Dart Hardware Co.*, 42 *Mont.* 96, 98, 111 *Pac.* 550.

In an action, under the federal employer's liability act, brought by the personal representative of one injured while employed by a common carrier in interstate commerce, the complaint must allege and the proof must show the existence of persons who answer the description of the beneficiaries named in the statute. *Melzner v. Northern Pac. Ry. Co.*, 46 *Mont.* 277, 288, 127 *Pac.* 1002.

Evidence sufficient to go to the jury, in an action for the death of the plaintiff's minor son, on the question of what pecuniary aid the plaintiff had a right to reasonably expect of his son, both before and after his majority. *Gilman v. The G. W. Dart Hardware Co.*, 42 *Mont.* 96, 102, 111 *Pac.* 550.

Editorial Notes.

Right of wife deserted by husband to recover for loss of services of minor child resulting from negligence of another. *Ann. Cas.* 1912A, 991.

Right to recover for death of child injured before birth. *Ann. Cas.* 1914C, 615.

§ 6486.

Action for death of minor. See note ante, § 6485.

Inapplicability of penal section. See note post, § 9209.

Remitting part of damages, or new trial, where damages are excessive. See note post, § 6794.

Wife and children have no vested right of action. See note ante, § 3692.

This section does not limit the right of recovery to minor children; hence, if there are children of a deceased father, of legal age, it is for the jury to say, under the evidence, whether they suffered damage through the death of their father, and what sum will compensate them. *Hollingsworth v. Davis-Daly E. C. Co.*, 38 *Mont.* 143, 163, 99 *Pac.* 142.

This section does not create a cause of action in favor of the wife and children of one, not a minor, killed by the wrongful act or negligence of another, because of the wrong done to them; the words of the statute "wrongful act or neglect of another" imply actionable wrong or negligence toward the decedent and not toward his surviving wife and children. *Melville v. Butte-Balaklava Copper Co.*, 47 *Mont.* 1, 8, 10, 130 *Pac.* 441.

While this section imposes responsibility upon all whose actual wrongdoing contributes to the death of another, whether they be employees or employers, indemnitees or indemnitors, responsibility for reputed wrongdoing is imposed upon but one class, namely, employers; and the rule *expressio unius est exclusio alterius*, therefore, operates to exclude all liability of indemnitors, except for actual, as distinguished from imputed, wrongdoing. *Northam v. Casualty Co.*, 177 *Fed.* 981, 985.

The right of action given by this section is distinct from that which a person killed would have had in case he had only been injured, but it is the same in character and is dependent upon the same facts. *Maronen v. Anaconda Copper Min. Co.*, 48 *Mont.* 249, 260, 136 *Pac.* 968.

History of actions for death, caused by the wrongful act or negligence of an-

other. *Melville v. Butte-Balaklava Copper Co.*, 47 Mont. 1, 18, 130 Pac. 441.

If a complaint for wrongful death, discloses a breach of statutory duty, such as in failing to close the cage doors before attempting to hoist or lower employees in a mining shaft, as required by section 8536, post, it sets forth facts constituting legal negligence on the part of the defendant, who may interpose any of the ordinary defenses applicable in negligence cases. *Maronen v. Anaconda Copper Min. Co.*, 48 Mont. 249, 263, 136 Pac. 968.

In an action for wrongful death, where the charge of wrongdoing was in failing to close the cage doors before attempting to hoist or lower employees in a mining shaft, as required by section 8536, post, the fact that section 8536 makes an omission to do as directed punishable, does not limit defenses, in an action under this section, 6486, to those available in a criminal action, as provided in section 9209, post; on the contrary, the defendant, in the civil action for wrongful death, may plead any of the defenses ordinarily interposed in negligence cases. *Maronen v. Anaconda Copper Min. Co.*, 48 Mont. 249, 261, 136 Pac. 968.

A master and his servant may properly be joined as defendants in an action for personal injuries, directly caused by the negligence of the servant, for which negligent act the master is answerable under the doctrine of respondeat superior. *Knuckey v. Butte Elec. Ry. Co.*, 41 Mont. 314, 320, 109 Pac. 979.

Where a man not a minor, is killed by the wrongful act or neglect of another, and his widow and children sue for damages, they cannot recover if death was due to the decedent's own fault; and the defendant may, therefore, interpose the defense of contributory negligence, assumption of risk, etc. *Melville v. Butte-Balaklava Copper Co.*, 47 Mont. 1, 8, 11, 130 Pac. 441.

If one is employed to work more than eight hours a day in a mine, in violation of sections 1739 and 1740, ante, and the miner is killed while so working in violation of these sections, the violation of the statute by the employer is legal negligence, but it is equally so on the part of the employee, and the latter cannot recover, because, in alleging the injury, he must, of necessity, allege his own fault. *Melville v. Butte-Balaklava Copper Co.*, 47 Mont. 1, 7, 130 Pac. 441.

The heirs of a miner, not a minor, who caused his own death by violating a rule of the company that had employed him, in not closing the doors of a safety cage, while being hoisted to the surface of a shaft, cannot recover damages because of contributory negligence on the part of the deceased. *Maronen v. Anaconda Copper Min. Co.*, 48 Mont. 249, 260, 136 Pac. 968.

Where a man, not a minor, has been killed by the wrongful act or neglect of

another, the right of his widow and children to recover damages depends upon whether the decedent, had he survived his injuries, could have recovered; they claim under him. *Melville v. Butte-Balaklava Copper Co.*, 47 Mont. 1, 10, 12, 130 Pac. 441.

In an action by a widow for the death of her husband, caused by the alleged negligence of the defendant, she may recover, as an element of damages, the pecuniary loss, if any, because of her being deprived of the comfort, protection, society and companionship of her husband. *Mize v. Rocky Mountain Bell Tel. Co.*, 38 Mont. 521, 535, 129 Am. St. Rep. 659, 16 Ann. Cas. 1189, 100 Pac. 971.

Punitive damages may be recovered against a mining company for the wrongful death of a miner, when the defendant is charged primarily as the wrongdoer. *Olsen v. Montana Ore Purchasing Co.*, 35 Mont. 412, 89 Pac. 731.

In an action for damages for death by wrongful act, brought by the mother of a boy, nineteen years of age, who was killed, while engaged in the discharge of his duties within the scope of his employment as fireman for a stationary engine, by coming in contact with a high-tension power wire, a verdict for eighteen thousand dollars was held not to be excessive, the mother being altogether dependent upon him for her support. *Hollenback v. Stone & Webster Eng. Corporation*, 46 Mont. 559, 570, 129 Pac. 1058.

Editorial Notes.

Joint liability of master and servant for tort of servant. 38 L. R. A. (N. S.) 356.

Liability of master for negligence of supervising employee in mine for acts done outside the scope of his statutory duty. 48 L. R. A. (N. S.) 938.

Action to recover damages for the wrongful causing of death. 48 Am. Dec. 632; 70 Am. St. Rep. 669.

Statute of limitations running after death and before administration granted. 65 Am. Dec. 594.

Presumption of death. 91 Am. Dec. 526; 92 Am. Dec. 704; 46 Am. Rep. 761; 104 Am. St. Rep. 198.

Damages, whether recoverable for death when resulting from negligence. 37 Am. Rep. 716.

Damages, measure of in actions for causing death of human being. 12 Am. St. Rep. 375, 17 L. R. A. 71.

Who is "dependent" within statute giving right of action for death by wrongful act to persons dependent on deceased. Ann. Cas. 1912B, 733.

Measure of damages recoverable by parent for death of minor child by wrongful act. Ann. Cas. 1912C, 58.

Law governing distribution of damages recovered for death by wrongful act. Ann. Cas. 1913D, 282.

Suit in foreign jurisdiction under statute permitting recovery for death by wrongful act. Ann. Cas. 1913D, 570.

Elements of damages recoverable by child for death of parent. 19 L. R. A. (N. S.) 128.

§ 6488.

Where, in an action on an account by the assignee, a justice of the peace permits the defendant to pay the amount into court and thereupon substitutes as defendants the assignor and another person, who claims to be entitled to the money, the substitution does not convert the purely legal cause of action into an equitable one so as to deprive the justice of jurisdiction. *Anderson v. Red Metal Min. Co.*, 36 Mont. 312, 93 Pac. 44.

One who has an equitable interest in a claim sued is properly made a party defendant, to the end that a complete determination of the controversy may be had in one action. *Reid v. Hennessy Co.*, 45 Mont. 462, 464, 124 Pac. 273.

§ 6491.

Neither in actions *ex contractu* nor in actions *ex delicto* can the plea of an obligation to the plaintiff individually be sustained by proof of an obligation running to himself and others jointly; to maintain a joint action, all the obligees must be made parties. *American L. & L. Co. v. Great Northern Ry. Co.*, 48 Mont. 495, 503, 138 Pac. 1102.

An obligation running to a combination of persons, jointly, cannot be changed into one upon which any single member of such combination may bring an action, by the fact that the defendant's agent knew, from previous transactions, that the plaintiff was a member of the combination, and that a failure to perform might result in some damage to the plaintiff. *American L. & L. Co. v. Great Northern Ry. Co.*, 48 Mont. 495, 504, 138 Pac. 1102.

Editorial Notes.

Joinder of defendants in equity. 15 Am. Dec. 427.

Right to maintain joint action against maker and indorser of promissory note. Ann. Cas. 1912D, 1201.

Right to maintain joint action against several defendants for money had and received. Ann. Cas. 1913A, 935.

§ 6492.

If an official bond, joint and several in character, has been signed by the principal, an action may be maintained against

a surety thereon without joining the principal. *Deer Lodge County v. United States F. & G. Co.*, 42 Mont. 315, 325, Ann. Cas. 1912A, 1010, 112 Pac. 1060.

§ 6494.

Action for death caused by wrongful act. See note ante, § 6486.

Action, when not to abate by death. See note ante, § 5251.

Action does not abate by death, when. See note ante, § 6485.

Liability under the federal employer's liability act. See note ante, § 5251.

Survival statute, what constitutes. See note ante, § 5252.

This section comprehends tort actions as well as others. *Melzner v. Northern Pac. Ry. Co.*, 46 Mont. 162, 180, 127 Pac. 146.

Every survival statute presupposes the existence of a cause of action in favor of the injured party; such a statute does not create a new cause of action, but only carries forward the right which the injured party had before his death. *Dillon v. Great Northern Ry. Co.*, 38 Mont. 485, 492, 100 Pac. 960.

If a minor receives personal injuries through the alleged negligence of another, and survives them for an appreciable length of time, but dies before any action is brought, the administrator of his estate may bring a suit to recover damages for such injuries; a contention that either the parent or guardian is the proper party plaintiff under section 6485, ante, has no merit. *Melzner v. Northern Pac. Ry. Co.*, 46 Mont. 162, 176, 127 Pac. 146.

In an action brought by the administrator of the estate of a minor, for personal injury resulting in the death of such minor, the measure of recovery is the same as the deceased could have recovered had he survived the injury; namely, damages for physical and mental suffering; for loss of earning capacity; and for the expense of medical and surgical attention, nursing, etc., incident to the injury. *Melzner v. Northern Pac. Ry. Co.*, 46 Mont. 162, 183, 127 Pac. 146.

Editorial Notes.

Abatement of right of action to contest will by death of contestant. Ann. Cas. 1913E, 128.

Effect of death of contestant before judgment in election contest. Ann. Cas. 1913D, 1291.

Action against physician for malpractice, death of defendant. Ann. Cas. 1912D, 870.

Survival of action for death by wrongful act after death of beneficiary. Ann. Cas. 1913E, 995.

Law governing survival of action. Ann. Cas. 1914B, 114.

§ 6495.

This section, taken as a whole, is intended to cover the subject of interpleader, both in law and in equity, one purpose being to enable courts of law to grant relief in a summary way, in many cases, in which theretofore they could grant none. *Anderson v. Red Metal Min. Co.*, 36 Mont. 312, 321, 93 Pac. 44.

This section provides for substitution and interpleader; it covers the subject of interpleader both at law and in equity; in an equity suit neither party is entitled to a jury trial, as a matter of right, though the trial court may call to its aid a jury to advise upon disputed questions of fact. *Missoula T. & S. Bank v. Murphy*, 50 Mont. 355, 146 Pac. 941.

Where an application for substitution is made on an amended answer, and the party substituted becomes defendant without objection, he waives irregularities in the mode of substitution. *Anderson v. Red Metal Min. Co.*, 36 Mont. 312, 93 Pac. 44.

Where the answer shows that persons appear as defendants, who were not origi-

nally defendants, but were by the order of the court substituted as such, it may be inferred from such fact that the substitution was made in pursuance of the provisions of this section. *Mettler v. Adamson*, 38 Mont. 198, 201, 99 Pac. 441.

Editorial Notes.

New parties, jurisdiction over, how acquired. 50 Am. St. Rep. 737.

Right to amend petition or complaint by adding or substituting new plaintiff suing for use of original plaintiff. *Ann. Cas.* 1913B, 110.

§ 6497.

A voluntary association of laborers may be sued in its common name; but, in the absence of a statute authorizing it, it cannot be sued in the name of its president. *Vance v. McGinley*, 39 Mont. 46, 49, 101 Pac. 247.

§ 6498.

Counterclaim and affirmative relief as between codefendants. See note post, § 6541.

VENUE.**§ 6502.**

Warden of state penitentiary is a public officer. See note post, § 9720.

An action against the warden of the state penitentiary, for tortious acts alleged to have been committed by him in the exercise of his authority as a public officer, is properly triable in the county where such acts were done; and, if the plaintiff selects another place of trial the defendant has an absolute right to have it changed to the county where such acts were committed. *State v. District Court*, 43 Mont. 571, 577, *Ann. Cas.* 1912C, 343, 118 Pac. 268.

Editorial Notes.

Proper county for place of trial of action against public officer for tort. *Ann. Cas.* 1912C, 345.

§ 6504.

Change of place of trial, though venue is properly laid. See note post, § 6506.

Place of trial for tortious acts. See note ante, § 6502.

If none of the defendants reside in this state, the action may be tried in any county that the plaintiff may designate in his complaint. *State v. District Court*, 40 Mont. 359, 366, 135 Am. St. Rep. 622, 106 Pac. 1098.

If men are employed to work at a mine, and no place of payment is mentioned, an action for wages may be tried in the county where the mine is situated; that being the place of performance.

State v. District Court, 41 Mont. 84, 87, 108 Pac. 144.

If an action to redeem from a mortgage on real property is commenced in the county where the mortgagor has his residence, instead of in the county where the mortgagee resides, where it should be brought, but no change of venue is asked under section 6505, post, the court in which the suit has been commenced has jurisdiction to try it. *State v. District Court*, 40 Mont. 173, 177, 105 Pac. 554.

Where the object of a suit is to redeem, the action is one in personam. *State v. District Court*, 40 Mont. 173, 176, 105 Pac. 554.

Editorial Notes.

Constitutional right of defendant to be sued in county of his residence. *Ann. Cas.* 1912C, 614.

§ 6505.

Disqualifying a judge for imputed bias. See note ante, § 6315.

Effect of not demanding trial in the proper county. See note ante, § 6504.

The "affidavit of merits," mentioned in this section, is not the same as that required for relief from a default judgment, under section 6589, post; the latter must set forth the merits of the defense. *State v. District Court*, 43 Mont. 571, 575, *Ann. Cas.* 1912C, 343, 118 Pac. 268.

The affidavit of merits need not set forth the facts relied upon by the defendant as a defense to the action, but is sufficient if it contains the statement "that

defendant has fully and fairly stated the case to his counsel, and that he has a good and substantial defense upon the merits in the action, as he is advised by his counsel and verily believes." *State v. District Court*, 43 Mont. 571, 576, Ann. Cas. 1912C, 343, 118 Pac. 268.

§ 6506.

In all cases where the venue is properly laid, the court may change the place of trial where there is reason to believe that an impartial trial cannot be had in the county first selected, or when the convenience of witnesses and the ends of justice would be promoted by the change, or when the judge is disqualified. *State v. District Court*, 43 Mont. 571, 578, Ann. Cas. 1912C, 343, 118 Pac. 268.

In the event that a judge is disqualified; that a motion is made for a change of venue; and that no qualified judge appears within thirty days to try the case, the motion is suspended for that length of time, at the expiration of which the transfer may be demanded, but the moving party is not bound to demand it; and if he does not, but thereafter has the cause set for hearing, he must be conclusively presumed to have waived the right to have it transferred. *Bean v. Missoula Lumber Co.*, 40 Mont. 31, 36, 104 Pac. 869.

When a judge is disqualified, and that fact is made to appear by affidavit, and a motion is made to transfer the case, the

moving party is entitled to have the transfer made, unless a qualified judge is called in to try it and appears within thirty days; in such case no transfer need be made. *Bean v. Missoula Lumber Co.*, 40 Mont. 31, 35, 104 Pac. 869.

If a judge called to preside in a case, because of the disqualification of the presiding judge, fails to appear and to assume jurisdiction, within thirty days after the motion for a change of venue is filed, it becomes the duty of the presiding judge to change the place of trial. *State v. District Court*, 49 Mont. 247, 251, 141 Pac. 659.

Editorial Notes.

Proper county for place of trial of action against public officer for tort. Ann. Cas. 1912C, 345.

Change of venue. 74 Am. Dec. 241.

§ 6507.

Under this section and the laws of 1909, chapter 114, where a change of venue, for disqualification of the presiding judge, is required, by the filing of a disqualifying affidavit, the cause must be transferred to the "nearest district court" of another judicial district, and that is the one that can be reached by the shortest route of travel in the usual mode of travel. *State v. District Court*, 49 Mont. 247, 251, 141 Pac. 659.

SUMMONS.

§ 6513.

Necessity of written charges for removal of city officer. See note post, § 3236.

Until a complaint is filed in a civil action, no action is commenced or can be pending. *State v. Mayor*, 43 Mont. 61, 64, 114 Pac. 777.

§ 6515.

Time within which nonresident may appear. See note post, § 6521.

A summons entitled in the wrong county is void and will not support an attachment. *Duluth Brewing etc. Co. v. Allen (Mont.)*, 149 Pac. 494.

Editorial Notes.

Efficacy of process issued without official seal required by law. Ann. Cas. 1912D, 786, 20 L. R. A. 424.

§ 6516.

Where the original summons was void because entitled in the wrong county, a so-called "alias summons" was not such in fact, but was the first valid summons issued in the action, and could not give effect to an attachment issued and served

prior to its issuance. *Duluth Brewing etc. Co. v. Allen (Mont.)*, 149 Pac. 494.

§ 6518.

Necessity of serving amended complaint. See notes post, §§ 6588 and 7149.

This section provides that a copy of the original complaint need not be served upon every defendant where there are two or more residing in the same county, but the same rule does not apply in the case of an amended complaint; in commencing an action, a copy of the summons must be served upon every defendant, and this constitutes notice to him; but where an amended complaint is filed, summons is not served, and, unless the defendant receives a copy of the amended pleading, he is without notice. *Ben Kress Nursery Co. v. Oregon Nursery Co.*, 45 Mont. 494, 496, 124 Pac. 475.

Editorial Notes.

Defects in the service of process. 61 Am. St. Rep. 485.

Sufficiency of service on single partner in action against firm. Ann. Cas. 1914A, 389.

Validity of service of summons by plaintiff's attorney. Ann. Cas. 1914A, 1201.

§ 6519. Subdivision 3. Service on Corporations.

Any corporation organized under the laws of the state of Montana, or doing business therein, may be served with summons by delivering a copy of the same to the president, secretary, treasurer, or other officer of the corporation, or to the agent designated by such corporation as the person upon whom service shall be made as required by law, and if none of the persons above mentioned can be found in the county, then service may be made upon any clerk, superintendent, general agent, cashier, principal director, ticket agent, station-keeper, managing agent or other agent, having the management, direction, or control of any property of such corporations. If none of the persons in this section described can be found in the county in which such action is commenced, then service may be made, as provided in this section, upon any of the persons herein described in any county of this state. And if none of the persons above named can be found in the state of Montana, and an affidavit stating that fact shall be filed in the office of the clerk of the court in which such action is pending, then the clerk of the court shall make an order authorizing the service of summons to be made upon the Secretary of State, who shall be and is hereby constituted an agent and attorney in fact to accept service on behalf of such corporation, and service upon said Secretary of State shall be deemed personal service upon said corporation. [Amendment approved February 18, 1915; Laws 1915, p. 31.]

In an action against a corporation, a recital, in the sheriff's return on a summons, that he served the same on the president of the defendant company, naming him, is prima facie evidence that the person named was president of the corporation. *Vadnais v. East Butte E. C. Min. Co.*, 42 Mont. 543, 545, 113 Pac. 747.

In a suit by a wife against her insane husband for a divorce, no effective decree can be rendered where the defendant was not served personally with summons. *State v. District Court*, 38 Mont. 166, 169, 129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

Editorial Notes.

Service of process upon corporation.
66 Am. Dec. 119.

What constitutes personal service.
16 L. R. A. 200.

Constitutionality of substituted service in action by leaving summons at defendant's residence or last or usual place of service. *Ann. Cas.* 1913B, 27.

§ 6520.

Presumption of actual notice of pendency of action. See note post, § 7962.

Whenever the statute, either in express terms or by implication, requires a person to make a statement which, from the very nature of things, can only be made on information and belief, an affidavit in that form meets the demands of the statute. *Smith v. Collis*, 42 Mont. 350, 363, *Ann. Cas.* 1912A, 1158, 112 Pac. 1070.

An affidavit for the publication of summons, where the defendant resides out of the state, is sufficient though the statements that the defendant is a nonresident; that the plaintiff has a cause of action against him; and that he is a necessary or proper party to the action, are made upon information and belief; in fact, that is the only possible ground upon which they can be made. *Smith v. Collis*, 42 Mont. 350, 363, *Ann. Cas.* 1912A, 1158, 112 Pac. 1070.

Every state has jurisdiction over property situated within its limits, even though owned by a nonresident; and in proceeding against such property, jurisdiction to render a valid judgment in rem may be acquired by substituted service. *Gassert v. Strong*, 38 Mont. 18, 30, 98 Pac. 497.

If a person in this state has possession of corporate stock, but the legal title thereto is in a nonresident, an action against the latter to establish and enforce a trust in such stock is one quasi in rem, and service by publication is sufficient to enable the district court to determine the relative rights of the parties to the stock. *Gassert v. Strong*, 38 Mont. 18, 35, 98 Pac. 497.

Service by publication does not warrant a judgment in a proceeding strictly in personam. *Gassert v. Strong*, 38 Mont. 18, 30, 98 Pac. 497.

Editorial Notes.

Effect of omission of statement that owner is unknown in affidavit for

service by publication in proceedings in rem to enforce tax. 36 L. R. A. (N. S.) 1064.

Character of inquiry as to whereabouts of party necessary to sustain constructive service of process. 37 L. R. A. (N. S.) 206.

§ 6521.

Time fixed in summons for appearance. See ante, § 6515.

This section is satisfied by publication of the summons once in each of four successive weeks; it does not require the period of publication to cover four full weeks, or twenty-eight days; the service is complete "on the day of the fourth publication." *Smith v. Collis*, 42 Mont. 350, 359, Ann. Cas. 1912A, 1158, 112 Pac. 1070.

A nonresident, served by publication and mailing, or, by having a copy of the summons together with a copy of the complaint delivered to him, has, under this section, the full period of four weeks and twenty days within which to make his appearance. *McLean v. Moran*, 38 Mont. 298, 302, 99 Pac. 836.

Editorial Notes.

Requirement of certain number of days' publication as meaning continuous publication. Ann. Cas. 1912B, 1273.

§ 6522.

What appearance gives jurisdiction. See note post, § 7149.

PLEADING.

§ 6530.

In this state there is no such pleading as a cross-bill. *Alywin v. Morley*, 41 Mont. 191, 206, 108 Pac. 778.

§ 6532.

Common law prevails how far. See note post, § 8060.

What complaint will arrest statute of limitations. See note ante, § 6457.

What is equivalent of prayer. See note post, § 6713.

Rule to determine effect of complaint. See note post, § 6566.

In an action to recover damages for the breach of a contract, this section was held to have been complied with in *Raiche v. Morrison*, 37 Mont. 244, 246, 95 Pac. 1061.

The common counts have been superseded by the code system of pleading. *Truro v. Passmore*, 38 Mont. 544, 549, 100 Pac. 966.

If the phraseology of any common count is adequate, in the particular case, to bring the pleader within the code rule, then his pleading is sufficient; otherwise, it is not. *Truro v. Passmore*, 38 Mont. 544, 549, 100 Pac. 966.

Under a common-law count for money had and received, the plaintiff cannot introduce evidence of fraud on the part of the defendants, the facts showing fraud not being set forth. *Truro v. Passmore*, 38 Mont. 544, 549, 100 Pac. 966.

In an action for personal injuries, the plaintiff must stand upon the cause of action stated in the complaint; he cannot, under an allegation that a brake on a hoisting engine was defective, introduce evidence that the brake was too light; or that the engine was defective; or that the exhaust from the engine was not properly connected; or that a different kind of brake should have been employed; neither can he introduce evidence of the effect of

the back pressure of steam. *Forsell v. Pittsburgh etc. Copper Co.*, 38 Mont. 403, 409, 100 Pac. 218.

A municipality is not required, under all circumstances, to keep its streets free from accumulations of ice and snow; it must do so only when they imperil life or limb. *McEnaney v. City of Butte*, 43 Mont. 526, 532, 117 Pac. 893.

If the complaint does not contain a statement of the facts constituting the cause of action, in ordinary and concise language, a special demurrer thereto is properly sustained. *Hasty v. Moulton Water Co.*, 39 Mont. 310, 313, 102 Pac. 568.

The requirement that a complaint shall contain "a statement of the facts constituting the cause of action, in ordinary and concise language," applies to new matter alleged in the answer. *Vaughan v. Kujath*, 44 Mont. 484, 487, 120 Pac. 1121.

In a complaint against a corporation, an averment that the defendant is a corporation shows that it has the legal capacity to be sued, and is all that is required; an averment showing where or under what law its corporate capacity was established is unnecessary. *Pearce v. Butte Electric Ry. Co.*, 41 Mont. 304, 307, 109 Pac. 275.

A complaint against a city for personal injuries received from falling on a sidewalk, obstructed with accumulations of ice and snow, does not contain a statement of facts in ordinary and concise language, and will not support a judgment, where it fails to allege facts showing that the city had notice of the obstruction for a sufficient length of time, before the injury, to have given it a reasonable opportunity to prevent accidents. *McEnaney v. City of Butte*, 43 Mont. 526, 533, 117 Pac. 893.

In an action against a city for damages alleged to have been sustained by reason of a defective sidewalk, the complaint fails to state a cause of action where it does not give the defendant any notice of the acts claimed to be negligent; an

allegation that the city negligently placed the sidewalk in an unsafe, dangerous, and defective condition and permitted it to remain in such condition is but the statement of the bare legal conclusion of the pleader, and does not state facts sufficient to show negligence on the part of the city. *Pullen v. City of Butte*, 38 Mont. 194, 198, 21 L. R. A. (N. S.) 42, 99 Pac. 290.

A complaint to set aside a judgment, and to vacate a sheriff's sale had to satisfy it, on the theory of fraud and wrongdoing, is insufficient where bald conclusions only are stated; the employment of such extravagant terms as "fraud," "conspiracy," and other words of like malign import, unaccompanied by a statement of fact upon which the charges of wrongdoing rest, is a useless waste of words. *Brandt v. McIntosh*, 47 Mont. 70, 72, 130 Pac. 413.

If, upon the facts stated, from any point of view, the plaintiff is entitled to relief, the complaint will be sustained. *Hicks v. Rupp*, 49 Mont. 40, 43, 140 Pac. 97.

The prayer is made a part of the complaint, by this section, but it is made such independently of the statement of facts constituting the cause of action; and, if the facts stated in the body of the complaint entitle the plaintiff to any relief, a general demurrer will not lie, no matter what may be the form of the prayer, or whether there is any prayer at all. *Donovan v. McDevitt*, 36 Mont. 65, 92 Pac. 49.

Editorial Notes.

Sufficiency of allegation of facts in regard to defect in street or highway, in action against municipal corporation, for injuries received therefrom. 21 L. R. A. (N. S.) 42.

Common counts, how far allowable under code system of pleading. 57 Am. Dec. 544.

Complaint stating same causes of action in different counts under the codes. 72 Am. Dec. 588.

§ 6533.

If causes of action are not stated separately, the proper remedy is by motion to make the complaint more definite and certain, by separately stating the causes of action. *Galvin v. O'Gorman*, 40 Mont. 391, 395, 106 Pac. 887.

There is nothing in the code to prohibit the plaintiff, acting in good faith, from stating a single cause of action in two counts in a suit to foreclose a mechanic's lien, when the averments of each are not so inconsistent as to be contradictory; when the allegations of either, or both, may be true, dependent upon the evidence to be produced; when the defendant is not misled; and when the exigencies of the case seem to demand such form of pleading. *Neuman v. Grant*, 36 Mont. 80, 92 Pac. 43.

§ 6534.

Effect of not raising, by answer, the question of legal capacity to sue. See note ante, § 5505.

Exception in justice's court. See note post, § 7008.

Objection that plaintiff has not legal capacity to sue. See note post, § 6535.

Waiver of objections. See post, § 6539.

A demurrer is not the proper method of attacking a complaint alleged to be defective for containing surplusage or conclusions of law. *Raiche v. Morrison*, 37 Mont. 244, 95 Pac. 1061.

Informality of a prayer in a complaint, or the absence of a prayer, is not ground for a demurrer. *Donovan v. McDevitt*, 36 Mont. 66, 92 Pac. 49.

The defects for which a demurrer will lie are those named in the statute; no others can be reached by it. *Donovan v. McDevitt*, 36 Mont. 66, 92 Pac. 49.

If it appears from the face of a complaint that another action is pending between the same parties for the same cause, the pleading is open to objection by demurrer, and it may be made in the words of the statute. *Peterson v. City of Butte*, 44 Mont. 129, 133, 120 Pac. 231.

If, after the plaintiffs have dismissed one cause of action, as to some of the defendants, the complaint discloses upon its face a misjoinder of parties defendant, and different causes of action improperly united, the remedy of the defendants is not a general objection to the introduction of evidence; they should ask leave to withdraw their answer and to file a special demurrer. *Meredith v. Roman*, 49 Mont. 204, 215, 141 Pac. 643.

A party's liability is not in any way affected, because another, who is not liable, is made a defendant with him; hence, a joint demurrer will be overruled, if a good cause of action is stated against either party. *Cummings v. Reins Copper Co.*, 40 Mont. 599, 619, 107 Pac. 904.

A defect of misjoinder of parties defendant can be raised only by special demurrer by the party improperly joined. *Cummings v. Reins Copper Co.*, 40 Mont. 599, 618, 107 Pac. 904.

If a complaint states facts sufficient to warrant a recovery upon any theory, it will be sustained. *Wahle v. Great Northern Ry. Co.*, 41 Mont. 326, 331, 109 Pac. 713.

§ 6535.

Objection in words of statute. See note ante, § 6534.

Under this and the following section, a demurrer must specify objections to the complaint, or to one or more of the sep-

arate causes of action stated therein, as a whole. *Plymouth Gold Min. Co. v. United States Fidelity etc. Co.*, 35 Mont. 23, 10 Ann. Cas. 951, 88 Pac. 565.

Ambiguity in a complaint is a defect that can be reached only by special demurrer. *Wahle v. Great Northern Ry. Co.*, 41 Mont. 326, 331, 109 Pac. 713; *Wheeler etc. Mer. Co. v. Moon*, 49 Mont. 307, 317, 141 Pac. 665.

An objection of want of capacity to sue, defect or misjoinder of parties, or misjoinder of causes of action must be made by a pleading which specifically points out the defect relied upon, whether the pleading be a demurrer or an answer. *O'Donnell v. City of Butte*, 44 Mont. 97, 99, 119 Pac. 281.

The objection that the plaintiff lacks legal capacity to sue cannot be raised by a general denial; if the fact of infancy appears from the face of the complaint, such objection may be taken by demurrer; if it does not so appear, the objection may be made by answer. *O'Donnell v. City of Butte*, 44 Mont. 97, 99, 119 Pac. 281.

A general denial does not raise an issue upon an allegation that a designated person is the duly appointed, qualified and acting guardian of minors, who are co-plaintiffs with such person. *O'Donnell v. City of Butte*, 44 Mont. 97, 98, 119 Pac. 281.

If a demurrer may follow the language of the statute, in certain cases, it would seem that the answer need not be more explicit. *Peterson v. City of Butte*, 44 Mont. 129, 134, 120 Pac. 231.

§ 6536.

The purpose of a demurrer is to raise and have determined the question whether the pleading, or cause of action at which it is directed, taken as a whole, states a case calling for a defense; its aim is to uproot and cast out the whole pleading. *Plymouth Gold Min. Co. v. United States Fidelity etc. Co.*, 35 Mont. 23, 10 Ann. Cas. 951, 88 Pac. 565.

A demurrer lies only to an entire complaint or to an entire cause of action, and it will not lie to the separate counts of a complaint for damages for death of a child which sets up but one cause of action in four separate counts. *Martin v. Northern Pac. Ry. Co. (Mont.)*, 149 Pac. 89.

§ 6537.

Judgment by default. See note post, § 6719.

When the demurrer to an amended complaint has been overruled, the defendant must file his answer within the time set by the court; service of it upon counsel for the plaintiff is not equivalent to filing it with the clerk. *State (ex rel. Smother-*

man) v. District Court, 50 Mont. 119, 145 Pac. 724.

Editorial Notes.

Admissibility against pleader of pleading superseded by amended pleading. Ann. Cas. 1913A, 1132.

Right to amend petition or complaint by adding or substituting new plaintiff suing for use of original plaintiff. Ann. Cas. 1913B, 110.

Amendment of pleading as requiring new process. Ann. Cas. 1914B, 831.

§ 6538.

Objections to be taken by answer, when. See note ante, § 6535.

When question of legal capacity to sue must be raised by answer. See note ante, § 5505.

If the fact that another action is pending, etc., does not appear from the face of the complaint, the objection that one is pending may be taken by answer. *Peterson v. City of Butte*, 44 Mont. 129, 133, 120 Pac. 231.

§ 6539.

Special demurrer, when proper. See note ante, § 6534.

Objection to be taken by demurrer, when, and when by answer. See note ante, § 6535.

Question of legal capacity to sue is waived, when, unless taken by answer. See note ante, § 5505.

An objection to the complaint for indefiniteness must be made by special demurrer, or it is deemed waived. *Billings Realty Co. v. Big Ditch Co.*, 43 Mont. 251, 256, 115 Pac. 828.

An apparently inadvertent substitution of the word, "defendant," for the word, "plaintiff," in a complaint, does not render the pleading insufficient; it is subject to special demurrer on the ground of uncertainty, but the defect is waived by answering to the merits. *Ivanhoff v. Teale*, 47 Mont. 115, 116, 130 Pac. 972.

Though a complaint is indefinite, that objection is waived, where a special demurrer was interposed, but did not point out this defect. *Cohen v. Clark*, 44 Mont. 151, 156, 119 Pac. 775.

If no objection to the capacity of minor plaintiffs to sue is taken by demurrer or answer, it is deemed to be waived. *O'Donnell v. City of Butte*, 44 Mont. 97, 100, 119 Pac. 281.

After issue joined, the complaint, though ambiguous in its allegations, should be construed most favorably to the plaintiff, as the defendant waived defects of this character by answering. *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 241, 99 Pac. 837.

The objection of a misjoinder of causes of action is waived, unless it is taken by answer or demurrer. *Forsell v. Pittsburgh etc. Copper Co.*, 38 Mont. 403, 407, 100 Pac. 218.

The objection that the complaint does not state facts sufficient to constitute a cause of action is never waived. *Clark v. Oregon Short Line R. R. Co.*, 38 Mont. 177, 186, 99 Pac. 298.

If a complaint states a cause of action, any question of ambiguity is waived, if no special demurrer on that ground is interposed. *Keffler v. Wilds*, 50 Mont. 381, 146 Pac. 1105.

The fact that the notice of appeal from a justice's court to the district court was served before filing, may be urged as a ground for dismissal of the appeal in the supreme court, although the point was not raised in the district court; as the question involves the jurisdiction of the district court to entertain the appeal, it may be raised at any time. *McCauley v. Jones*, 35 Mont. 32, 38, 88 Pac. 572.

An objection that the complaint is ambiguous and uncertain cannot be urged on appeal where no special demurrer, because of such defects, was interposed in the court below. *Chenoweth v. Great Northern Ry. Co.*, 50 Mont. 481, 148 Pac. 331.

A complaint, in an action to determine an adverse claim in patent proceedings in the matter of mining property, defective in omitting to allege that an adverse claim has been filed in the land office within sixty days after application for patent, is not aided by allegations in the reply; and the sufficiency of the complaint to support judgment may be raised at any time during the progress of the case. *Thornton v. Kaufman*, 35 Mont. 181, 184, 88 Pac. 796.

§ 6540.

Bar from asserting counterclaim. See note post, § 6547.

Issue raised by denial of knowledge, etc. See note post, § 6723.

Requirement as to language of new matter in answer. See note ante, § 6532.

Meaning of "any new matter" calling for a reply. See note post, § 6560.

This section and section 6541, post, were designed to enable parties litigant to adjust their differences in one action, so far as possible, and thereby to prevent a multiplicity of suits; this conclusion is re-enforced by the provisions of section 6547, post; and, for statutes so highly remedial, a broad and liberal construction is required in order that the purposes designed by them shall be most completely served. *Scott v. Waggoner*, 48 Mont. 536, 543, 139 Pac. 454.

The answer consists of two parts: 1. Admissions and denials; 2. New matter con-

stituting a defense or counterclaim. *Rand v. Butte Electric Ry. Co.*, 40 Mont. 398, 406, 107 Pac. 87.

A denial of knowledge or information sufficient to form a belief as to the truth of an allegation is authorized by this section. *First Nat. Bank v. Silver*, 45 Mont. 231, 235, 122 Pac. 584.

The provisions authorizing a denial on information and belief are applicable to any or every allegation in the complaint; hence, that form of denial will raise an issue as to the corporate existence of the plaintiff. *Milwaukee Gold etc. Co. v. Gordon*, 37 Mont. 209, 216, 95 Pac. 995.

Under this section, a defendant may deny generally or specifically certain allegations of the complaint; he may, as to some of the allegations, deny any knowledge or information thereof sufficient to form a belief; he may admit other allegations; and he may put still others, or all others, in issue by a general denial. *Pengelly v. Peeler*, 39 Mont. 26, 30, 101 Pac. 147.

An allegation by defendants that they "say defendants have not sufficient knowledge or information to form a belief as to matters and facts alleged" in a certain paragraph of the complaint, "and therefore deny the same," is in substantial compliance with this section. *Milwaukee Gold etc. Co. v. Gordon*, 37 Mont. 209, 95 Pac. 995.

A general denial is proper in cases where certain allegations have already been generally or specifically denied, and in cases where the pleader has already denied any knowledge or information sufficient to form a belief as to the truth of particular allegations, and has specifically admitted others. *Pengelly v. Peeler*, 39 Mont. 26, 30, 101 Pac. 147.

Where the complaint, in an action for waste, demands a money judgment only, and the defendant asks that his title be quieted as against the plaintiff, nothing in his answer partaking of the nature of an affirmative cause of action or counterclaim, and the reply demanding, among other things, that the plaintiff have her title quieted as against the defendant, it is error to render judgment in favor of the plaintiff for the possession of the land and quieting her title, the pleadings not justifying such a decree. *Erbes v. Smith*, 35 Mont. 38, 46, 88 Pac. 568.

In this state there is no such pleading as a cross-bill. *Alywin v. Morley*, 41 Mont. 191, 206, 108 Pac. 778.

The defendant may plead inconsistent defenses, if they are not so incompatible as necessarily to render one or the other absolutely false. *O'Donnell v. City of Butte*, 44 Mont. 97, 101, 119 Pac. 281.

Any defense that a garnishee could interpose, in an action brought against him

by the defendant, may be interposed as garnishee in an action by the attaching creditor; but, if he relies upon a counterclaim, he must, in either case, plead it. *Dolenty v. Rocky Mountain Bell Tel. Co.*, 41 Mont. 105, 115, 108 Pac. 921.

A defendant, whether as defendant or as garnishee, cannot avail himself of a counterclaim unless he pleads it; it cannot be asserted under a general denial of indebtedness; and the furnishing of a bill of particulars in which his claim is listed is not pleading a counterclaim. *Dolenty v. Rocky Mountain Bell Tel. Co.*, 41 Mont. 105, 115, 108 Pac. 921.

A setoff, as such, is not recognized by the codes. *Dolenty v. Rocky Mountain Bell Tel. Co.*, 41 Mont. 105, 114, 108 Pac. 921.

Editorial Notes.

Answer, denial in on information and belief, when permissible. 70 Am. Dec. 625; 133 Am. St. Rep. 105.

Effect of denial on information and belief of matter necessarily within knowledge of defendant. Ann. Cas. 1912C, 149; 30 L. R. A. (N. S.) 771.

Right to plead inconsistent defenses. 48 L. R. A. 177.

§ 6541.

Construction of words and phrases. See post, § 8070.

The provisions of this section have no application to cases coming within the jurisdiction of justices' courts. *Walter v. Cox*, 36 Mont. 20, 24, 91 Pac. 1063.

"Transaction" is not synonymous with "contract"; it is broader than "contract," and broader than "tort," although it may include either or both; it is "that combination of acts and events, circumstances and defaults, which, viewed in one aspect, results in the plaintiff's right of action, and viewed in another aspect, results in the defendant's right of action"; and it "applies to any dealings of the parties resulting in wrong, without regard to whether the wrong be done by violence, neglect, or breach of contract." *Scott v. Waggoner*, 48 Mont. 536, 545, 139 Pac. 454.

The words, "subject of the action," ought to be understood, not as relating to the thing itself about which the controversy has arisen, but as referring rather to the origin and ground of the plaintiff's right to recover or obtain the relief asked. *Pittsmtont Copper Co. v. O'Rourke*, 49 Mont. 281, 293, 141 Pac. 849.

The provision of the second subdivision of this section, which, in an action on a contract, authorizes any other cause of action on contract, existing at the commencement of the action, to be set up as a counterclaim, applies to implied as well

as express contracts. *First Nat. Bank v. Silver*, 45 Mont. 231, 237, 122 Pac. 584.

To constitute a counterclaim, the facts must disclose a cause of action in favor of the defendant and against the plaintiff, existing at the time of the commencement of the action. *First Nat. Bank v. Silver*, 45 Mont. 231, 236, 122 Pac. 584.

A counterclaim sounding in tort may be pleaded as a demand upon a contract, if it arises out of the transaction that gave rise to the plaintiff's cause of action. *Scott v. Waggoner*, 48 Mont. 536, 545, 139 Pac. 454.

Rules for determining when one cause of action may be asserted as a counterclaim in an action upon another cause of action. *Kaufman v. Cooper*, 39 Mont. 146, 156, 101 Pac. 969.

Matter, in an answer, is not a counterclaim, unless it states a cause of action, complete within itself, and tends in some way to diminish or defeat plaintiff's recovery. *Hillman v. Luzon Cafe Co.*, 49 Mont. 180, 188, 142 Pac. 641.

Where a chattel mortgage has been given to secure the unpaid purchase money for an automobile, but on the same day a new arrangement is made between the seller and purchaser, whereby the latter is to run the machine for hire, and the buyer afterward sues the seller for seizing the machine and converting it to his own use, the defendant may counterclaim for the balance on the machine. *Kinsman v. Stanhope*, 50 Mont. 41, 144 Pac. 1083.

In this section, no mention is made of a claim against a codefendant; in an action for an accounting, it may be that a defendant can, upon pleadings adequate to support a judgment, obtain affirmative relief against a codefendant by filing a pleading in the nature of a counterclaim; but this cannot be done where the complaint does not set forth a cause of action and the defendant's pleading in his own behalf is insufficient to support a judgment. *Alywin v. Morley*, 41 Mont. 191, 209, 108 Pac. 778.

If the plaintiff has a cause of action against the defendant, at the time of filing his complaint, and no counterclaim is filed, he ought to recover. *Isman v. Altenbrand*, 42 Mont. 188, 195, 111 Pac. 849.

In an action by a landlord for rent due under a written lease and for damages for waste committed on the premises, it is proper for the defendant to interpose a counterclaim for the conversion of personal property placed by him on the premises. *Scott v. Waggoner*, 48 Mont. 536, 547, 139 Pac. 454.

Editorial Notes.

Scope and office of counterclaim. 89 Am. Dec. 482.

Necessity that defendant designate counterclaim as such in pleading. Ann. Cas. 1913A, 1079.

Setoff, recoupment and counterclaim distinguished. Ann. Cas. 1914B, 119.

Right of indorser of note to setoff against note individual debt due him from holder of note. Ann. Cas. 1913A, 1302.

Mutual agreement for setoff as mutual account. Ann. Cas. 1913D, 817.

Right to set up counterclaim or setoff against demand for wages which are exempt from execution. Ann. Cas. 1914C, 1183.

Right to interpose counterclaim or setoff exceeding jurisdiction of court. Ann. Cas. 1913D, 159.

§ 6547.

Purpose of provisions as to counterclaim. See note ante, § 6541.

It is only such a counterclaim as is mentioned in subdivision one of section 6541, ante, that a party must assert in a pending action, or be forever barred from thereafter maintaining an action therefor; it must affirmatively appear from the pleadings that the cause of action asserted is one which falls within the class mentioned in the subdivision named. *Kaufman v. Cooper*, 39 Mont. 146, 155, 101 Pac. 969.

§ 6549.

A defendant may plead inconsistent defenses, so long as the inconsistency is not so marked that, if the facts stated in one be true, the facts stated in the other must of necessity be false. *Day v. Kelly*, 50 Mont. 306, 146 Pac. 930.

A plea of contributory negligence does not admit the truth of particular allegations of negligence stated in the complaint, although the answer also contains a general or specific denial of those allegations. *Day v. Kelly*, 50 Mont. 306, 146 Pac. 930.

§ 6551.

A demand made by the defendant, in his answer in an action for waste, that his title be quieted, which demand is not based upon a properly pleaded cause of action or counterclaim, should be disregarded. *Erbes v. Smith*, 35 Mont. 38, 47, 88 Pac. 568.

It is a contradiction in terms to say that a defendant may have affirmative relief without pleading a counterclaim or counteraction against the plaintiff, because there is nothing upon which to base the judgment or decree. *Erbes v. Smith*, 35 Mont. 38, 47, 88 Pac. 568.

§ 6560.

Answer, what to contain. See ante, § 6540.

A denial, filed in September, 1902, in a suit to foreclose a materialman's lien, of any knowledge or information sufficient to form a belief as to the truth of certain allegations in a counterclaim, was ineffective, as the statute stood at that time, to put such allegations in issue. *McEwen v. Union Bank etc. Co.*, 35 Mont. 470, 90 Pac. 359.

The "new matter" in an answer which calls for a reply is such only as calls for a defense or a counterclaim; anything else is not new matter. *Stephens v. Conley*, 48 Mont. 352, 368, 138 Pac. 189.

A reply is required only when the answer contains new matter which constitutes a defense or counterclaim, stated as such. *Rand v. Butte Electric Ry. Co.*, 40 Mont. 398, 406, 107 Pac. 87.

§ 6562.

In an action by the state to restrain interference with water, wherein the defendant pleaded a counterclaim and set up a prescriptive right as a defense, it was held that the words "such statement" mean the statement of the new matter relied on as constituting a defense, without any reference to the matter set up in the complaint. *State v. Quantic*, 37 Mont. 57, 94 Pac. 491.

If the facts stated in the answer can be proved under a general denial, they do not constitute "new matter," and a failure to reply does not admit the truth of the matters stated. *Stephens v. Conley*, 48 Mont. 352, 369, 138 Pac. 189.

Where the allegations of the defendant's "further and separate answer and defense" are such as to require a reply, and none is filed, he is entitled to have judgment entered without other proof than the pleadings. *Anaconda Copper Min. Co. v. Thomas*, 48 Mont. 222, 224, 137 Pac. 380.

§ 6565.

Verification of affidavit of merits. See note post, § 6589.

Pleadings in general must be verified, but, in permitting a defendant to set forth in his answer as many defenses as he has, it was never intended to sanction or encourage perjury. *Johnson v. Butte etc. Copper Co.*, 41 Mont. 158, 165, 48 L. R. A. (N. S.) 938, 108 Pac. 1057.

Editorial Notes.

Manner and sufficiency of verification of pleading by corporation. Ann. Cas. 1913A, 212.

§ 6566.

This section does not permit the reading into the pleading of a statement of a necessary, substantial fact which has been omitted, so as to make it state a cause of action where none is stated; but it does require that whatever is necessarily implied by a statement directly made, or is reasonably to be inferred therefrom, is to be taken as directly averred. *Allen v. Bear Creek Coal Co.*, 43 Mont. 269, 278, 115 Pac. 673.

Whatever is necessarily implied in, or is reasonably to be inferred from, an allegation is to be taken as directly averred. *County of Silver Bow v. Davies*, 40 Mont. 418, 424, 107 Pac. 81.

An allegation that the chief deputy of a clerk of the district court issued jurors' and witnesses' certificates as chief deputy implies that he issued them in the form and under the requirements prescribed by the statute. *County of Silver Bow v. Davies*, 40 Mont. 418, 425, 107 Pac. 81.

Where the subject of denial, on information and belief, is certain specified allegations of the complaint, the omission of the word "thereof," in denying that the defendant has any knowledge or information sufficient to form a belief, is immaterial; the pleading is to be liberally construed. *Pengelly v. Peeler*, 39 Mont. 26, 31, 101 Pac. 147.

As against an attack for lack of substance, the allegations of a pleading are to be liberally construed, with a view to substantial justice between the parties; and whatever is necessarily implied in, or is reasonably to be inferred from, an allegation is to be taken as directly averred. *Gauss v. Trump*, 48 Mont. 92, 98, 135 Pac. 910.

§ 6568.

For the purpose of purging a pleading of irrelevant and redundant matter, a motion to strike must be resorted to; this may be, in effect, a demurrer to that portion of the pleading to which objection is made; nevertheless, its office cannot be performed by a demurrer; a demurrer and a motion each has its own separate and distinct office. *Plymouth Gold Min. Co. v. United States Fidelity etc. Co.*, 35 Mont. 23, 27, 10 Ann. Cas. 951, 88 Pac. 565.

§ 6569.

The term "account," in this section, is not used in the same sense as it is in section 7007, post. *Moran v. Ebey*, 39 Mont. 517, 519, 104 Pac. 522.

§ 6571.

Proof of jurisdictional facts in a justice's court. See note post, § 7071.

In a suit on a judgment, an allegation in a complaint that the judgment was "made, filed, and entered," is not in the language of the statute, but is cured by the averments of a proposed answer, in statutory language, that it "was duly given" and "made." *Storer v. Graham*, 43 Mont. 344, 349, 116 Pac. 1011.

One whose asserted claim depends upon the validity of a justice's judgment, may plead simply that such judgment was "duly given or made"; but, if such allegation is controverted, he must show affirmatively that the court which rendered the judgment had jurisdiction. *Miller v. Miller*, 47 Mont. 150, 153, 131 Pac. 23.

§ 6572.

Defects in complaint waived, unless met by special demurrer. See note ante, § 6539.

An allegation that the plaintiff actually completed all of the work and labor to be by him performed under his contract, and did all of the things to be by him performed under said contract, and did all of the things in said contract of him required to be done, is a sufficient allegation of performance of the contract, and meets the requirements of this section. *Ivanhoff v. Teale*, 47 Mont. 115, 116, 130 Pac. 972.

§ 6575.

The recording of a deed, containing a mistake, is to be considered with other facts and circumstances in determining whether the party affected by such mistake is to be charged with notice, either actual or constructive; the fact of recording alone will not so charge him; and an action brought by such party, under the code of 1895, for the reformation of such an instrument was held not to be barred by the statute of limitations because of the mere fact that more than five years had elapsed between the date of the recording and the date of the commencement of such action. *American Min. Co. v. Basin & Bay State Min. Co.*, 39 Mont. 476, 482, 24 L. R. A. (N. S.) 305, 104 Pac. 525.

Editorial Notes.

Effect of public records as notice, or evidence of notice, which will set the statute of limitations running against action based on fraud. 22 L. R. A. (N. S.) 207.

Who may plead statute of limitations 104 Am. St. Rep. 742.

§ 6579.

Leave to file amended answer. See note post, § 6588.

§ 6583.

If, in an action on the defendant's guaranty for the payment of rent, the plaintiff makes out a prima facie case of non-payment of the rent, by means of his deposition read in evidence, but a new trial is had, the burden is upon the defendant, on the second trial, in which the same deposition is put in evidence, to overcome such prima facie case, though the plaintiff has filed no supplemental pleading. *Isman v. Altenbrand*, 42 Mont. 188, 191, 196, 111 Pac. 849.

§ 6585.

Unsubstantial variance is no ground for reversal. See note post, § 7118.

An immaterial variance will not work a reversal. *Stewart v. Stone & Webster Eng. Corp.*, 44 Mont. 160, 173, 119 Pac. 568, 2 N. C. C. A. 279.

Immaterial variances will not be considered on appeal, where they do not affect the substantial rights of the parties. *Willoburn Ranch Co. v. Yegen*, 49 Mont. 101, 112, 140 Pac. 231.

A judgment in favor of the plaintiff, in a water right suit, will not be reversed on the ground of variance between the evidence introduced to establish his right and an allegation in his replication, as indicated by a finding of the court, where the record does not disclose that the appellants have been misled to their prejudice. *Vreeland v. Edens*, 35 Mont. 423, 89 Pac. 735.

Immaterial variance. *Cassidy v. Slemons & Booth*, 41 Mont. 426, 432, 109 Pac. 976.

Instance of slight, technical variance, in mechanic's lien case, held not to be material. *Wertz v. Lamb*, 43 Mont. 477, 481, 117 Pac. 89.

Mere divergencies of proof, in its details, are not of vital consequence. *American L. & L. Co. v. Great Northern Ry. Co.*, 48 Mont. 495, 502, 138 Pac. 1102.

A party will not be heard to complain that he was misled to his prejudice, by a variance, unless he was surprised at the trial by having to meet issues not pleaded. *Frederick v. Hale*, 42 Mont. 153, 161, 112 Pac. 70.

In an action for personal injuries, caused by a street-car suddenly moving "forward," as alleged in the complaint, evidence that the injury was caused by a "backward" movement of the car is not material where the defendant was not misled. *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 247, 99 Pac. 837.

If, in the opinion of the court, the evidence presents a material variance, it may direct an amendment, upon proper terms, but it cannot submit the case to the jury upon evidence tending to estab-

lish a cause of action wholly outside the issues, without according to the defendant full opportunity to controvert it with his proof. *McCrimmon v. Murray*, 43 Mont. 457, 470, 117 Pac. 73.

Editorial Notes.

Amendment of pleading in appellate court to conform to proof. Ann. Cas. 1913E, 1315.

Reversal of judgment for technical violation of rule that allegation and proof must agree. Ann. Cas. 1913D, 68.

Right of appellate court to reverse judgment sua sponte, for variance. Ann. Cas. 1914A, 468.

§ 6586.

What variance is not material. See note ante, § 6585.

Where the terms of a contract for the sale of land are involved, and the agreement, as alleged, is proved, except in the single particular as to when and how the balance of the purchase money was to be paid, the variance should be regarded as immaterial. *Milwaukee Land Co. v. Rue-sink*, 50 Mont. 489, 148 Pac. 396.

§ 6587.

Variance amounting to failure of proof of claim against estate. See note post, § 7532.

Judgment against one of several defendants though the proof fails as to the others. See note ante, § 5829.

Where one contract is pleaded and another is proved, or where the complaint alleges one breach of duty, and the evidence establishes a different one, the variance amounts to a failure of proof, upon the occurrence of which a nonsuit is proper. *American L. & L. Co. v. Great Northern Ry. Co.*, 48 Mont. 495, 502, 138 Pac. 1102.

When the cause of action pleaded is unproved, it is not a mere variance, but a failure of proof. *Knuckey v. Butte Elec. Ry. Co.*, 41 Mont. 314, 325, 109 Pac. 979.

Editorial Notes.

Right of appellate court to reverse judgment sua sponte, for variance. Ann. Cas. 1914A, 468.

Reversal of judgment for technical violation of rule that allegations and proof must agree. Ann. Cas. 1913D, 68.

§ 6588.

Amendments in discretion of court. See note post, § 6589.

Amended complaint must be served. See note post, § 7149.

Effect of amendment. See note ante, § 6457.

Copy of complaint to be served with summons. See note ante, § 6518.

Judgment by default. See post, § 6719.

After a cause is set for trial and has been continued by stipulation, the defendant cannot file an amended answer as a matter of right; he must first obtain leave of court, under section 6589, post. *Meredith v. Roman*, 49 Mont. 204, 211, 141 Pac. 643.

It is necessary that a judgment be based upon a sufficient pleading; it cannot be based upon the original complaint where an amended complaint has been filed; the amended complaint supersedes the original complaint, which becomes *functus officio*. *Ben Kress Nursery Co. v. Oregon Nursery Co.*, 45 Mont. 494, 497, 124 Pac. 475.

An amended complaint must be served on all the adverse parties who are to be bound by the judgment, whether it materially affects them or not; if the amended complaint is not served upon a defendant, there is no pleading upon which a judgment against him can be sustained. *Ben Kress Nursery Co. v. Oregon Nursery Co.*, 45 Mont. 494, 497, 124 Pac. 475.

Until an amended pleading is served and the statutory time for appearance has expired, the adverse party cannot be adjudged in default. *Ben Kress Nursery Co. v. Oregon Nursery Co.*, 45 Mont. 494, 497, 124 Pac. 475.

If each of two defendants has been served, but, before the time for appearance has expired and before any appearance has been made by either, an amended complaint is filed and served upon one of them only, a default judgment cannot properly be entered against the one not served. *Ben Kress Nursery Co. v. Oregon Nursery Co.*, 45 Mont. 494, 497, 124 Pac. 475.

A defendant who demands relief against a codefendant, must do so before the issues between him and the plaintiff have been made up; section 6579, ante, does not authorize him to do it afterward, by amended answer, without first obtaining leave of court. *Meredith v. Bitter Valley Irr. Co.*, 49 Mont. 204, 211, 141 Pac. 643.

Editorial Notes.

Right to amend pleading after default judgment. *Ann. Cas.* 1913B, 481.

Amendment of pleading as ground for continuance. *Ann. Cas.* 1914A, 1268.

Right to amend pleading so as to set up statute of limitation. *Ann. Cas.* 1914A, 24.

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Amendment to complaint setting forth additional ground of negligence as cause of same injury as stating new cause of action. *Ann. Cas.* 1913D, 742.

§ 6589.

"Affidavit of merits," for change of venue; distinction. See note ante, § 6505.

Facts sufficient for postponement. See note post, § 6729.

Presumption of actual notice of pendency of action. See note post, § 7962.

Leave to file amended answer. See note ante, § 6588.

This section authorizing the vacation of judgments fair on their face, within a reasonable time not exceeding six months, applies to both judgments at law and decrees in equity, subject to the rule that a court of equity will not interfere so long as there is another subsisting adequate remedy. *State v. District Court*, 38 Mont. 166, 172, 129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

The power to allow or disallow amendments at any stage of the trial is within the discretion of the court; and, if no abuse is shown, the court's action will be approved on appeal. *De Celles v. Casey*, 48 Mont. 568, 573, 139 Pac. 586.

In proper cases, the court may, even on its own motion, direct an amendment if, in its opinion, a nonsuit or mistrial may be avoided. *De Celles v. Casey*, 48 Mont. 568, 573, 139 Pac. 586.

The court may, and should, allow an amended memorandum of costs to be filed, where the purpose is to furnish the objecting party with information relative to alleged expenditures, the absence of which from the original was claimed to be prejudicial; and it is not necessary to make a preliminary showing that such information was omitted by inadvertence, surprise, or excusable neglect. *Neary v. Northern Pac. Ry. Co.*, 41 Mont. 480, 508, 110 Pac. 226.

A pleading may be amended so as to correspond with the proof; the application to amend is addressed to the sound discretion of the trial court, and, in the absence of any abuse of such discretion, the action of the trial court will be approved on appeal. *Sandeen v. Russell Lumber Co.*, 45 Mont. 273, 279, 122 Pac. 913.

After issue joined, the matter of permitting amendments to pleadings is addressed to the discretion of the court, and its ruling thereon will not be disturbed on appeal, where no abuse of discretion is shown. *Cullen v. Western M. & W. Title Co.*, 47 Mont. 513, 528, 134 Pac. 302.

The court may permit an amendment of a complaint, which amounts to nothing

more than the correction of a mistake made in the pleading as originally drawn. *Downs v. Cassidy*, 47 Mont. 471, 474, Ann. Cas. 1915B, 1155, 133 Pac. 106.

In a divorce suit, where the plaintiff inadvertently alleges that the "defendant," instead of the plaintiff, has been a resident, as prescribed in section 3674, ante, a mistake apparently affecting the question of jurisdiction, he will be allowed, after a default judgment has entered, and after the expiration of the six months' limitation, to amend his complaint by substituting the word "plaintiff" for the word "defendant." *Eadie v. Eadie*, 44 Mont. 391, 396, Ann. Cas. 1913B, 479, 120 Pac. 239.

Delay in filing an amended answer, though entirely excusable, does not justify a change of the issues without permission of the court. *Meredith v. Bitter Valley Irr. Co.*, 49 Mont. 204, 213, 141 Pac. 643.

A mistake as to the law is not the mistake contemplated by this section; and ignorance of the law is not an excuse for a default. *Canning v. Fried*, 48 Mont. 560, 563, 139 Pac. 448.

Mere forgetfulness is not a sufficient excuse for setting aside a judgment by default. *Lowell v. Willis*, 46 Mont. 581, 583, Ann. Cas. 1914B, 587, 43 L. R. A. (N. S.) 930, 129 Pac. 1052.

Assuming this section to be applicable to the default of a party in failing to present his bill of exceptions in time for settlement, ignorance of the law governing such time, as prescribed in sections 6788 and 7190, post, is no excuse for a default. *Canning v. Fried*, 48 Mont. 560, 562, 139 Pac. 448.

Where a defendant applies to have his default set aside, he must, in addition to excusing his default, support his application by an affidavit of merits setting forth the facts constituting his defense, or tender with his motion an affidavit and copy of his proposed answer. *Schaeffer v. Gold Cord Min. Co.*, 36 Mont. 410, 412, 93 Pac. 344. (Citing Code Civ. Proc., § 774, and holding the affidavit of merits filed to be insufficient.)

The defaulted party must show that he has a defense; otherwise the court cannot determine whether justice will be promoted or retarded by setting aside the default. *Vadnais v. East Butte E. C. Min. Co.*, 42 Mont. 543, 546, 113 Pac. 747.

On motion to set aside a default judgment, an affidavit of merits may be made by the attorney of an absent party, and the verification may be upon information and belief. *State v. District Court*, 38 Mont. 415, 418, 100 Pac. 415.

A defaulting nonresident defendant, not personally served, and who seeks to set aside a default judgment rendered against him, must show that he did not

have actual notice of the pendency of the action in time to make a defense; that he proceeded promptly to have the default set aside; that he has a prima facie defense upon the merits; and that the judgment, if permitted to stand, will injuriously affect him; if he fails, in any of these particulars, it cannot be held that the trial court abused its discretion in refusing to set aside the judgment. *Smith v. Collis*, 42 Mont. 350, 370, Ann. Cas. 1912A, 1158, 112 Pac. 1070.

Where a defendant makes default and suffers judgment upon a mere ex parte showing, his remedy in seeking relief from the judgment is under this section, and not by a motion for a new trial, under section 6794, post. *State (ex rel. Culbertson Ferry Co.) v. District Court*, 49 Mont. 595, 601, 144 Pac. 159.

Relief under this section, after the required showing is made, cannot be demanded as a matter of right; it is granted as a matter of grace; in other words, the statute refers the subject to the sound, legal discretion of the trial court. *Kersten v. Coleman*, 50 Mont. 82, 144 Pac. 1092.

Where a defendant's demurrer to an amended complaint has been overruled, and he has failed to file his answer within the time set by the court, and a judgment by default has been entered, the court, may, in its discretion and upon a proper showing, set the judgment aside and permit the defendant to file an answer. *State (ex rel. Smotherman) v. District Court*, 50 Mont. 119, 145 Pac. 724.

Assuming that an answer may supply the place of an affidavit of merits, in aid of a motion to vacate a default judgment, it does not warrant the granting of the motion where the nature of the defense does not appear, and where it fails to show that the granting of the relief would be in furtherance of justice. *Pearce v. Butte Electric Ry. Co.*, 40 Mont. 321, 325, 106 Pac. 563.

Where a default has been entered in proceedings to escheat an estate, it should be set aside, at the instance of foreign heirs who afterward appear and show, prima facie, that they are heirs at law of the decedent; that they have exercised the utmost diligence in getting their claims before the court; and that their interests will be lost, if the default is permitted to stand; and such heirs should then be allowed to appear in proceedings to establish heirship. *State v. District Court*, 38 Mont. 415, 419, 100 Pac. 207.

A decree of divorce, secured without personal service of summons on the defendant, an insane person, may be vacated, the same as any other judgment, for want of jurisdiction in the court to render it. *State v. District Court*, 38 Mont. 166, 173, 129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

It is no abuse of discretion to set aside a default judgment, entered through a mistake of counsel as to the date when an amended pleading was to have been filed. *Voelker v. Golden Curry Con. Min. Co.*, 40 Mont. 466, 467, 107 Pac. 414.

An order vacating a default judgment will not be set aside merely because the court failed to impose terms. *Nash v. Treat*, 45 Mont. 250, 254, Ann. Cas. 1913E, 751, 122 Pac. 745.

Any pleading or proceeding may, upon notice to the adverse party be amended "at any time" under this section, but as to formal defects only; the six months' limitation of this section applies only to the court's power to relieve a party from a default judgment taken against him through his mistake, inadvertence, etc. *Eadie v. Eadie*, 44 Mont. 391, 395, Ann. Cas. 1913B, 479, 120 Pac. 239.

A judgment void on its face may be set aside on motion at any time; but this rule does not apply to a judgment fair on its face, the infirmity of which must be shown by extrinsic evidence. *State v. District Court*, 38 Mont. 166, 171, 129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

After the expiration of the time limit fixed in this section, the power of the court over the judgment absolutely ceases, and it is without jurisdiction to vacate or modify it. *State v. District Court*, 38 Mont. 166, 171, 129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

Where a decree of divorce against an insane husband was procured without personal service of summons, and is therefore void for want of jurisdiction, there can be no relief, after the expiration of the time limit fixed in this section, except by an action in equity to set aside the decree, as it is fair upon its face and the defect of jurisdiction must be made to appear by evidence dehors the record; and the defendant is not to be denied relief in equity because he did not proceed under this section within the six months, where no lack or want of diligence is imputed to him. *State v. District Court*, 38 Mont. 166, 172, 129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

An order refusing a motion to vacate a judgment on the ground of mistake, surprise, or excusable neglect, will not be reversed on appeal, if no complaint is made that the lower court abused its discretion. *Ferguson v. Parrott*, 36 Mont. 354, 92 Pac. 965.

Editorial Notes.

Absolute right of defendant not personally served to have judgment opened and to defend. Ann. Cas. 1912A, 1164; 12 Ann. Cas. 992.

Forgetfulness as ground for opening or setting aside default judgment.

Ann. Cas. 1914B, 589; 43 L. R. A. (N. S.) 930.

Insanity as affecting judgments. 35 L. R. A. (N. S.) 1098.

Right to amend pleading after default judgment. Ann. Cas. 1913B, 481.

Right to have default judgment opened, on account of failure of person, other than party or his attorney, to attend to case. Ann. Cas. 1913E, 752.

Who may have judgment against other parties set aside. 54 L. R. A. 758.

Vacation and setting aside of judgments, statute authorizing when by default. 58 Am. Dec. 392.

Power of courts to vacate judgments after the time specified in the statute for granting relief therefrom. 52 Am. St. Rep. 795.

Vacation on motion, when not specially authorized by statute. 60 Am. St. Rep. 633.

Opening or vacating because of negligence or inadvertence of attorney. 80 Am. St. Rep. 264; 96 Am. St. Rep. 108.

Forgetfulness as ground for opening or setting aside default judgment. Ann. Cas. 1914B, 589.

§ 6591.

Amendment after demurrer sustained. See also, note ante, § 6457.

§ 6593.

One who appears and resists a motion cannot complain of insufficient notice. See note post, § 7141.

Unsubstantial variance is no ground for reversal. See note post, § 7118.

Power of supreme court. See ante, § 6253; post, § 7119.

This section is intended to put a speedy end to litigation, when that object can be attained without injustice; its design is to prevent reversals of causes wherein substantial justice has already been done; and the supreme court is commanded by it to give judgment on appeal without regard to errors which do not affect the substantial rights of the parties. *Copenhaver v. Northern Pac. Ry. Co.*, 42 Mont. 453, 467, 113 Pac. 467.

A variance between the evidence introduced by a plaintiff to establish his contention in a water right suit and an allegation in his replication is deemed immaterial on appeal, where the record contains nothing to show that the appellants were misled by it to their prejudice. *Vreeland v. Edens*, 35 Mont. 423, 89 Pac. 735.

A mere irregularity, not affecting a substantial right, is no ground for re-

versal of judgment. Consolidated etc. Min. Co. v. Struthers, 41 Mont. 565, 573, 111 Pac. 152.

Technical error is not ground for reversal unless it appears that the rights of the parties have been prejudiced by it. White v. Chicago etc. Ry. Co., 49 Mont. 419, 426, 143 Pac. 561.

Judgment will not be reversed because of error, if it was harmless. Shandy v. McDonald, 38 Mont. 393, 397, 100 Pac. 203.

A defendant is not entitled to a new trial on the ground of variance, where he was not misled. Robinson v. Helena Light & Ry. Co., 38 Mont. 222, 239, 99 Pac. 837.

A judgment for the defendant will not be reversed for error committed during the trial, where the plaintiff is not, in any

view of the case, entitled to a judgment. Howell v. Bent, 48 Mont. 268, 273, 137 Pac. 49.

Notwithstanding there may be some question as to whether causes of action in tort and in contract have not been improperly joined, the supreme court will affirm the judgment, where the case has been tried on its merits and substantial justice appears to have been done. Ivey v. La France Copper Co., 45 Mont. 71, 75, 121 Pac. 1061.

§ 6594.

Where the minutes of the court show that counsel for a party was in court when an order was made, no notice is required to be given, to him, of such order. Pearce v. Butte Electric Ry. Co., 40 Mont. 321, 323, 106 Pac. 563.

REPLEVIN.

§ 6622.

Editorial Notes.

When and against whom replevin is maintainable. 88 Am. St. Rep. 741.

Necessity and sufficiency of allegation, in the complaint in replevin, as to the ownership or right to possession. Ann. Cas. 1912A, 333.

Replevin for property seized under execution. 20 Am. Dec. 696; 80 Am. St. Rep. 697.

Right of one from whom property has been taken in replevin to maintain similar action for its recovery. 8 L. R. A. (N. S.) 216.

When defendant not in possession. 18 L. R. A. (N. S.) 1265.

§ 6626.

Justification of sureties on redelivery bond. See note post, § 6632.

Under this section, the sureties are not required to justify unless the defendant excepts to their sufficiency and gives notice to the plaintiff. State v. Collins, 41 Mont. 526, 530, 110 Pac. 526.

§ 6632.

Justification of sureties on plaintiff's undertaking. See note ante, § 6626.

This section omits any requirement that written notice, or any notice, be given to the defendant that the sureties upon his redelivery bond are not deemed sufficient. State v. Collins, 41 Mont. 526, 530, 110 Pac. 526.

Where the defendant desires the redelivery of the property to himself, he must not only tender to the officer a redelivery bond, but give notice to the plaintiff, as required, that his sureties will justify. State v. Collins, 41 Mont. 526, 530, 110 Pac. 526.

If the defendant, at the time the papers are served, tenders to the officer a cash bond to retain the property, but which bond is insufficient to meet the requirements of the statute, he thereby waives his right to thereafter tender a redelivery bond. State v. Collins, 41 Mont. 526, 531, 110 Pac. 526.

It is the duty of the sheriff, where the sureties on a return bond of the defendant have failed to justify, to deliver the property to the plaintiff. State v. Collins, 41 Mont. 526, 530, 110 Pac. 526.

INJUNCTIONS.

§ 6643.

Temporary injunction, pendente lite, to abate public nuisance. See note post, § 6865.

The purpose and office of a restraining order is merely to prevent such injury as may occur before the hearing for an injunction can be had and inquiry be made as to the truth of the preliminary showing made by the plaintiff; this is its only office; and, when such hearing has been had, the order is of no further efficiency. Rea Bros. Sheep Co. v. Rudi, 46 Mont. 149, 159, 127 Pac. 85.

Where a plaintiff mining company will probably recover a large judgment against a defendant company for the value of ore extracted from veins owned by the plaintiff, the defendant may be restrained from extracting and selling ore from ground, the title to which is in dispute, upon affidavit that, if the work of extracting and selling ore is continued, the defendant will not have enough property to satisfy the judgment that may be recovered against it. Montana Min. Co. v. St. Louis M. & M. Co., 168 Fed. 514, 518, 93 C. C. A. 536.

If, upon the hearing for a preliminary injunction, a prima facie case as to the truth of the charges of wrongful conduct by the defendant is not shown, the restraining order should be set aside and the injunction refused. *Rea Bros. Sheep Co. v. Rudi*, 46 Mont. 149, 159, 127 Pac. 85.

After the judge has exercised his discretionary power in issuing a restraining order, upon the complaint alone, he may thereafter hear evidence as to the propriety of issuing a preliminary injunction without hearing the whole case upon its merits. *Rea Bros. Sheep Co. v. Rudi*, 46 Mont. 149, 159, 127 Pac. 85.

If the plaintiff for a preliminary injunction makes out a prima facie case; or if, upon the showing made, it is left doubtful whether or not he will suffer irreparable injury before his rights can be fully investigated and determined, the court ought to incline to issue the injunction and preserve the status quo. *Rea Bros. Sheep Co. v. Rudi*, 46 Mont. 149, 160, 127 Pac. 85.

Editorial Notes.

Right to grant temporary injunction before institution of action. *Ann. Cas.* 1913E, 462.

Mandatory injunction. 20 Am. Dec. 389.

Right to preliminary injunction which would have effect of transferring possession of property from defendant to plaintiff. 39 L. R. A. (N. S.) 31.

§ 6644.

An injunction order may be made upon the complaint alone, or upon the complaint

with affidavits; in either case, it must satisfactorily appear that sufficient grounds exist for granting it. *Rea Bros. Sheep Co. v. Rudi*, 46 Mont. 149, 159, 127 Pac. 85.

A complaint, verified upon knowledge, is a good basis for an injunction, when issued upon the complaint. *Lowery v. Cole*, 47 Mont. 64, 67, 130 Pac. 410.

In exigent cases, a preliminary injunction may be granted, without notice, either upon the verified complaint alone or upon affidavits, if, in the opinion of the court, irreparable injury will result from the delay required by giving notice. *Lowery v. Cole*, 47 Mont. 64, 67, 130 Pac. 410.

§ 6645.

Granting without notice. See note ante, § 6644.

§ 6646.

If counsel fees come within the provisions of this section, then by the same rule of construction they fall within the purview of section 892 of the Code of Civil Procedure, and may be recovered as an element of damage on the contract of a surety. *Plymouth Gold Min. Co. v. United States Fidelity etc. Co.*, 35 Mont. 23, 29, 10 Ann. Cas. 951, 88 Pac. 565.

§ 6647.

If a city treasurer fails to turn over interest received by him on public funds, an action brought, more than three years after the cause of action accrues, to recover such interest, is barred, under the third subdivision of this section. *City of Butte v. Goodwin*, 47 Mont. 155, 166, Ann. Cas. 1914C, 1012, 134 Pac. 670.

ATTACHMENT.

§ 6656.

Attachment is properly discharged, when. See note post, § 6683.

As classified by our codes, attachment is a provisional remedy. It is a summary proceeding ancillary to the action in which it is issued. The writ as we know it was unknown to the common law. It is of statutory origin and depends for its validity entirely upon a compliance with the statutory requirements. *Duluth Brewing etc. Co. v. Allen* (Mont.), 149 Pac. 494.

A writ of attachment is issued prior to the issuance of a valid summons is void. So where the original summons was void

because entitled in the wrong county, a so-called "alias summons" was not such in fact, but was the first valid summons issued in the action, and could not give legal effect to a writ of attachment issued and served before it was issued. *Duluth Brewing etc. Co. v. Allen* (Mont.), 149 Pac. 494.

Where property is sold under a contract providing that title shall remain in the seller until the purchase price is paid, the seller does not have a mortgage or lien upon the property, and an attachment lies. *State ex rel. Malin-Yates Co. v. Justices of Peace Court* (Mont.), 149 Pac. 709.

§ 6658. Attachment Prior to Maturity of Debt.

Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the same shall have become due when it shall appear by the affidavit in addition to what is required in section 6657, Chapter 4, Title VIII, Part II of the Code of Civil Procedure:

First: That the defendant is leaving, or is about to leave this state, taking with him property, moneys or other effects, which might be sub-

jected to the payment of the debt, for the purpose of defrauding his creditors; or,

Second: That the defendant is disposing of his property, or is about to dispose of his property, subject to execution, for the purpose of defrauding his creditors.

Provided, however, that on the trial of any cause brought under the provisions of this section judgment may be rendered on any such debt not due upon satisfactory proof to the court of the facts alleged in the affidavit for attachment, as provided in this section. Any such judgment shall be with a rebatement of the interest from the time said judgment is rendered until the time at which said debt shall have become due.

Provided, also, that the defendant may by plea put in issue the matter alleged in the affidavit herein required, and if the plaintiff fails to substantiate some one of the causes required to be alleged in said affidavit, the suit for debt or debts not due shall abate. [Amendment approved February 9, 1911; Laws 1911, p. 18.]

Editorial Notes.

Fraudulent sale or conveyance of property as ground for attachment. 5 Ann. Cas. 618.

What intent to defraud will sustain an attachment. 30 L. R. A. 465.

Right of debtor to exemption as affected by preparation to remove from state. Ann. Cas. 1913C, 729.

attachment dissolved, fall within the purview of this section. Plymouth Gold Min. Co. v. United States Fidelity etc. Co., 35 Mont. 23, 29, 10 Ann. Cas. 951, 88 Pac. 565.

§ 6660.

Sureties on the undertaking of a defendant in an attachment suit, having bound themselves to pay any judgment the plaintiff in such suit might recover against their principal, are bound in case the attachment defendant fails to pay. Daekich v. Barich, 37 Mont. 490, 97 Pac. 931.

§ 6659.

Practice where the sheriff is sued for conversion. See note post, § 6673.

Attorney fees, paid or agreed to be paid, for services rendered in having an

§ 6662. Levy of Attachment.

The sheriff to whom the writ is directed and delivered must execute the same without delay and if the undertaking mentioned in section 6660 (893) be not given as follows:

1. Real property standing upon the records of the county in the name of the defendant must be attached by filing with the county clerk a copy of the writ, together with the description of the property attached, and a notice that it is attached.

2. Real property or an interest therein belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached by filing with the county clerk a copy of the writ, together with a description of the property, and a notice that such real property and any interest of the defendant therein held by or standing in the name of such other person, (naming him) are attached. The county clerk must index such attachment when filed, in the names of both of the defendant and of the person by whom the property is held, or in whose name it stands on the record.

3. Personal property, capable of manual delivery, must be attached by taking it into custody, except in cases in which personal property capable of manual delivery is in the possession of a third person, and such personal property, so in the possession of a third person, may be attached in the same manner as debts or credits and other personal property not capable of manual delivery as hereinafter provided.

4. Stocks or shares, or interest in stocks or shares, of any corporation or company must be attached by leaving with the president or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

5. Debts or credits and personal property not capable of manual delivery, and personal property in the possession of a third person, must be attached by leaving with the person owing such debt, or having in his possession or under his control such credits and personal property, or with his agent, a copy of the writ and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ.

6. Judgments standing in favor of and in the name of the defendant upon the records of the clerk of the district court must be attached by leaving with the said clerk of the district court a copy of the writ and a notice stating that the said judgment is attached in pursuance of such writ. The clerk of the district court must index and keep a record of all attachments of judgments hereunder and such attachment is binding on the judgment creditor. [Amendment approved March 4, 1911; Laws 1911, p. 153.]

Attachment on execution. See note ante, § 6131.

Query, whether a creditor seeking to reach assets of his debtor which have been fraudulently conveyed must allege and prove that he has secured a lien by causing attachment or execution to be levied. *Koopman v. Mansolf* (Mont.), 149 Pac. 491.

Editorial Notes.

Levy of attachment on personal property, what sufficient. 21 Am. Dec. 677.

Right to attach at location of corporation shares belonging to non-resident. Ann. Cas. 1912D, 954.

Levy of attachment as subject to collateral attack. Ann. Cas. 1913C, 146.

§ 6667.

Attachment on execution. See note ante, § 6131.

If the liability of the garnishee is certain, and the only uncertainty which exists is as to the amount of such liability, then the debt, whatever it may be, is subject to garnishment. *Dolenty v. Rocky Mountain Bell Tel. Co.*, 41 Mont. 105, 120, 108 Pac. 912.

Where a merchant has transferred his stock in violation of the "Bulk Sales Law," and the buyer, at the time of the levy of an execution upon him, accompanied by a notice of garnishment, has the identical property in his possession, he is liable, under this section, to the plaintiff creditor who sues him as garnishee. *Wheeler etc. Mer. Co. v. Moon*, 49 Mont. 307, 317, 141 Pac. 665.

§ 6673.

In an action against a sheriff for damages for the illegal seizure of saloon fixtures and stock in trade, wherein the answer denies the plaintiff's claim of ownership, it is not necessary for the plaintiff to make a third party claim for the property. *O'Brien v. Quinn*, 35 Mont. 446, 90 Pac. 166.

Practice where the sheriff is sued in conversion for property attached and retained by him. *Gehlert v. Quinn*, 38 Mont. 1, 4, 98 Pac. 369.

Editorial Notes.

Right of claimant of attached property to intervene. 18 Ann. Cas. 594.

Prorating proceeds of attached property among creditors. Ann. Cas. 1913C, 285.

§ 6681.

Attachment is properly discharged, when. See note post, § 6683.

Defendant's general appearance in an action does not defeat the right to move thereafter to discharge the attachment on the ground that it had been issued prior to the issuance of a valid summons. *Duluth Brewing etc. Co. v. Allen* (Mont.), 149 Pac. 494.

Editorial Notes.

Irregularities and defects which will avoid attachment. 79 Am. Dec. 164.

Dissolution of attachment by death. 80 Am. Dec. 139.

Proceedings to dissolve attachment. 123 Am. St. Rep. 1028.

Divestiture of attachment lien by subsequent occupation of land for homestead purposes. Ann. Cas. 1913B, 1149.

§ 6683.

An attachment is properly discharged, where the complaint does not state a cause of action, though the affidavit for attachment does so; the court must

look to the complaint to ascertain whether a cause of action in contract, express or implied, is stated. *Kyle v. Chester*, 42 Mont. 522, 528, 37 L. R. A. (N. S.) 230, 113 Pac. 749.

A justice of the peace must discharge an attachment if it appears that the writ was improperly or irregularly issued. *State ex rel. Malin-Yates Co. v. Justice of Peace Court (Mont.)*, 149 Pac. 709.

§ 6692a. Foreign Corporations—Jurisdiction—Attachment.

All foreign corporations or joint stock companies, except foreign insurance companies and corporations otherwise provided for, organized under the laws of any other state or territory of the United States, or, of the United States, or of any foreign government, and doing business in this state, or which may hereafter engage in business in this state, shall be deemed and taken to be corporations of this state for purposes of jurisdiction and, shall be subject to the jurisdiction of the courts of this state, and may sue and be sued therein in the mode and manner that is or may be by law directed in the case of corporations created or organized under the laws of this state.

The stocks or shares of such foreign corporations and joint stock companies, doing business in this state shall be subject to attachment in the same manner as now provided by law in the case of domestic corporations. [Approved March 8, 1909; Laws 1909, c. 109, p. 158.]

Editorial Notes.

Attachment of stock in foreign corporations. 52 Am. St. Rep. 474.

Right to attach at location of corporation shares belonging to non-resident. Ann. Cas. 1912D, 954.

RECEIVERS.

§ 6698.

Necessity that action be pending. See note ante, § 6315.

This section does not authorize the appointment of a receiver when a money judgment is recovered in an action at law; that is not necessary to carry the judgment into effect; the creditor himself can take the necessary steps to enforce it. *Forsell v. Pittsburg & M. C. Co.*, 42 Mont. 412, 422, 113 Pac. 479.

Neither subdivision 1 nor 6 of this section authorizes the appointment of a receiver in an attachment suit. *Berryman v. Billings etc. Heating Co.*, 44 Mont. 517, 522, 121 Pac. 280.

The appointment of a receiver is permissible only in an action pending for some other purpose; the chief reason for its allowance is to husband the property in litigation for the benefit of the person who may be found entitled thereto. *Lyon v. United States Fidelity etc. Co.*, 48 Mont. 591, 600, 140 Pac. 86.

To justify the appointment of a receiver, it must appear that the property is in danger of being lost, removed, or materially injured. *Brown v. Erb-Harper-Rigney Co.*, 48 Mont. 17, 26, 133 Pac. 691.

A receiver cannot be appointed, under this section, in aid of execution, where

no proceedings in aid of execution have been had, and no property has been found. *Forsell v. Pittsburg & M. C. Co.*, 42 Mont. 412, 423, 113 Pac. 479.

This section is to be read in connection with the recognized principle that receivership is an extraordinary remedy, never to be allowed except upon a showing that it is necessary; no such showing is made by mere insolvency; nor, by a parity of reasoning, because the conduct of the corporation has been such that its corporate rights are subject to forfeiture. *Prudential S. Co. v. Three Forks etc. R. Co.*, 49 Mont. 567, 571, 144 Pac. 158.

Editorial Notes.

When it is proper to appoint a receiver. 72 Am. St. Rep. 29.

Right to appointment of receiver before suit is instituted. Ann. Cas. 1912B, 236.

When and of what property receivers will be appointed. 64 Am. Dec. 482.

Affidavit or verified bill as essential to appointment of receiver. Ann. Cas. 1913A, 608.

Power of court to appoint receiver in absence of statute. Ann. Cas. 1913B, 648.

Deadlock in affairs of corporation as ground for appointment of receiver. Ann. Cas. 1914B, 240.

Who is "creditor" entitled to apply for appointment of receiver for insolvent corporation. Ann. Cas. 1912A, 901.

Appointment of receiver for foreign corporation. Ann. Cas. 1913E, 457.

§ 6701.

What deemed adjudged in a judgment. See post, § 7917.

This section was designed to provide indemnity against wrongful receiverships and has special application to those cases in which the appointment was wrongful, because the applicant has no right thereto upon the merits; but this fact is not finally determinable anywhere short of trial; hence, an adjudication, on a motion to vacate the receivership, that the appointment was procured wrongfully, maliciously and without sufficient cause, is not an essential prerequisite to an action on the undertaking, conditioned as provided in this section. *Lyon v. United States F. & G. Co.*, 48 Mont. 591, 599, 140 Pac. 86.

In an action on an undertaking given pursuant to the provisions of this section, it is not necessary for the plaintiff to allege and prove a specific adjudication, in the primary suit, that the appointment of the receiver was procured wrongfully, maliciously, or without sufficient cause; or, that the receivership has been vacated in response to a motion for that purpose. *Lyon v. United States Fidelity etc. Co.*, 48 Mont. 591, 599, 140 Pac. 86.

In an action on the undertaking, conditioned as prescribed in this section, the

value of property delivered to the receiver but not returned by him may be recovered, though it is not shown that the loss was due to his fault, or that it could not have occurred without his fault. *Lyon v. United States F. & G. Co.*, 48 Mont. 591, 599, 140 Pac. 86.

In an action on an undertaking given pursuant to the provisions of this section, an adjudication that the appointment of the receivership was procured wrongfully, maliciously, and without sufficient cause, may be implied from the final decree in the primary suit, adjudging the ownership of the property to be in the defendant, the plaintiff in the action on the undertaking. *Lyon v. United States Fidelity etc. Co.*, 48 Mont. 591, 599, 140 Pac. 86.

§ 6703.

The appointment of a receiver for a corporation invests the receiver with the right to the possession and control of the corporation's assets, and to the same extent suspends the functions of the corporation; suits with reference to the trust estate must thereafter be prosecuted by the receiver, and to the same extent that this power is lodged in the receiver, it is withdrawn from the corporation. *State (ex rel. First Trust & Sav. Bank) v. District Court*, 50 Mont. 259, 146 Pac. 539.

The appointment of a receiver for a corporation does not operate to dissolve it, nor to transfer the ownership of the property involved in the receivership; it still belongs to the corporation, though it is in the hands of the receiver to be administered under the law. *State (ex rel. First Trust & Sav. Bank) v. District Court*, 50 Mont. 259, 146 Pac. 539.

JUDGMENT.

§ 6710.

Order to disclose assets of a decedent's estate is not a "final judgment." See note post, § 7098.

Pending of action after judgment. See note post, § 7188.

Decrees in equity are judgments within the meaning of this section, and are, so far as they award a recovery of money, in nowise different from judgments at law. *Raymond v. Blancgrass*, 36 Mont. 449, 15 L. R. A. (N. S.) 976, 93 Pac. 648.

An order is not a judgment. *Pentz v. Corscadden*, 49 Mont. 581, 144 Pac. 157.

§ 6711.

Judgment against one of several parties. See note ante, § 5829.

§ 6712.

Judgment against one of several parties. See note ante, § 5829.

In case several defendants are jointly and severally liable, the district court may enter judgment against one or more of them, leaving the action to proceed against the others. *State v. District Court*, 37 Mont. 302, 96 Pac. 337.

The plaintiff, in an action against a railway company and one of its employees, for injuries caused to him in being ejected from a freight train by one of the company's brakemen, has the option to proceed against either or both of the defendants by whose concurrent negligence the wrong was done. *Golden v. Northern Pac. Ry. Co.*, 39 Mont. 435, 444, 18 Ann. Cas. 886, 34 L. R. A. (N. S.) 1154, 104 Pac. 549.

§ 6713.

Informality of a prayer in a complaint, or the absence of a prayer, is not ground for a demurrer. *Donovan v. McDevitt*, 36 Mont. 66, 92 Pac. 49.

Where, in a foreclosure suit, the principal defendants enter into a stipulation

that the judgment may be entered against them in accordance with the prayer of the complaint, it is error for the court to direct, in its decree, not only the sale of the property and the application of the proceeds to the satisfaction of the mortgages, but also the application of the surplus to the satisfaction of judgments set up in the plaintiff's replication to the answer of another defendant, holding liens on the property. *Manuel v. Turner*, 36 Mont. 512, 93 Pac. 808.

Though a complaint has no formal prayer for judgment, it is sufficient if it contains an allegation showing the limits of the plaintiff's claim; such an allegation serves the same practical purpose as a formal prayer for judgment. *Pearce v. Butte Electric Ry. Co.*, 41 Mont. 304, 307, 109 Pac. 275.

Editorial Notes.

Validity of default judgment awarding relief beyond prayer of complaint. 11 Ann. Cas. 353; 11 L. R. A. (N. S.) 803.

§ 6714.

Direction of verdict. See note post, § 6761.

Directory statute as to entry of default. See note post, § 6719.

Subdivision 6 of this section is mandatory, notwithstanding the use of the word "may" in the first sentence of the section. *State v. District Court*, 37 Mont. 298, 304, 96 Pac. 337. But see *Rule v. Butori*, 49 Mont. 342, 141 Pac. 672.

Subdivision 6 of this section was enacted for the benefit of the defeated or defaulting party, and to prevent the suspension over his head of an action which should be ended; the policy of the law is to put an end to litigation at the earliest practical moment. *State v. District Court*, 37 Mont. 298, 304, 96 Pac. 337.

This section applies to both plaintiffs and defendants, and the action of the court is in the nature of a penalty. *Pullen v. City of Butte*, 45 Mont. 46, 57, 121 Pac. 878.

This section is not mandatory; and, to justify a dismissal, the party entitled to judgment must have been "negligent" in having it entered; his "failure" to have it entered does not necessarily justify a dismissal, because he may have been in ignorance of the fact that a judgment was rendered; and he is not answerable for the clerk's failure to perform his duty. *Rule v. Butori*, 49 Mont. 342, 343, 141 Pac. 672. (Commenting upon *State v. District Court*, 37 Mont. 298, 96 Pac. 337.)

The regularity of the proceedings in a case anterior to judgment cannot be reviewed except on appeal from the judgment or an order denying a new trial.

Ferguson v. Parrott, 36 Mont. 354, 92 Pac. 965.

Under the rule of *noscitur a sociis*, the words "final submission" mean a submission which is the equivalent of the return of a verdict; or, in other words, they refer to that state of the case when a judgment may rightly be demanded as of course. *State v. District Court*, 37 Mont. 300, 96 Pac. 337.

Independently of the provisions of this section, a court has power to dismiss an action whenever it appears that the plaintiff has, without sufficient excuse, failed to prosecute it to final judgment. *State Sav. Bank v. Albertson*, 39 Mont. 414, 421, 102 Pac. 692.

When the plaintiff's evidence does not tend to establish the cause of action stated in the complaint, the court may direct a verdict, or take the case from the jury and enter a judgment of nonsuit; in either case, the result is the same. *Consolidated etc. Min. Co. v. Struthers*, 41 Mont. 565, 572, 111 Pac. 152.

A motion for a nonsuit will be sustained where, upon the facts proved, the plaintiff is not entitled to any relief. *Hoskins v. Northern Pac. Ry. Co.*, 39 Mont. 394, 403, 102 Pac. 988.

In the case of a default, final submission has not been reached until formal entry of the default; hence, where no such formal entry has been made, there has been no final submission, and the court cannot be compelled to dismiss the cause. *State v. District Court*, 46 Mont. 348, 355, 128 Pac. 582.

It is only after verdict, or final submission equivalent thereto, that a cause may be dismissed for failure to have judgment entered for more than six months. *State v. District Court*, 46 Mont. 348, 354, 128 Pac. 582.

Where no judgment is entered, within six months, on a verdict rendered for the defendant, in an action against a city, a judgment dismissing the action, though nothing is said about dismissal without prejudice, is not a judgment on the merits, and is no bar to another action for the same cause; the court cannot enlarge the plaintiff's rights by inserting in the judgment a notation that the cause is dismissed "without prejudice." *Pullen v. City of Butte*, 45 Mont. 46, 57, 121 Pac. 878.

Where none of the parties caused judgment to be entered upon the findings for eight years and no showing was made absolving them from such duty, and all of the parties were entitled to affirmative relief and equally negligent as to the entry of judgment, the suit will not be dismissed. *Joyce v. McDonald (Mont.)*, 149 Pac. 953.

Editorial Notes.

Right of plaintiff to take voluntary nonsuit or dismissal after verdict or

finding but before judgment. Ann. Cas. 1913D, 525.

Nonsuit, compulsory, when should be granted. 24 Am. Dec. 620.

Right to enter nonsuit or direct verdict on opening statement of counsel. 29 L. R. A. (N. S.) 218.

Mere scintilla of evidence as sufficient to justify submission of cause to jury. Ann. Cas. 1914B, 472.

Right of court to direct verdict in favor of one codefendant at close of defendant's case. Ann. Cas. 1912D, 1061.

§ 6715.

For a judgment on the pleadings to constitute a judgment on the "merits" it must determine the merits of the controversy as distinguished from the merits of the pleadings attacked; and the mere fact that section 6714, ante, makes no mention of a judgment on the pleadings does not necessarily, by virtue of section 6715, constitute such a judgment one on the merits. *Glass v. Basin etc. Min. Co.*, 35 Mont. 567, 90 Pac. 753.

§ 6717.

Judgment on directed verdict as judgment on the merits. See note post, § 6761.

A judgment of dismissal is not a bar to another action, unless rendered on the merits, which fact must appear either by express declaration upon the face of the judgment, or elsewhere, from the judgment-roll. *Glass v. Basin etc. Min. Co.*, 35 Mont. 567, 90 Pac. 753.

A decision on a former appeal, that a judgment on the pleadings is the same as a judgment on demurrer, and that a judgment, relied on as *res judicata*, showed upon its face that it belonged to the class referred to in this section, when it declares that a final judgment dismissing a complaint is not a bar to a new action "unless it expressly declares, or it appears by the judgment-roll, that it is rendered upon its merits," constitutes the law of the case on a subsequent appeal. *Glass v.*

Basin etc. Min. Co., 35 Mont. 567, 90 Pac. 753.

§ 6719.

Expiration of time for filing answer. See note ante, § 6537.

Remedy against judgment by default. See ante, § 6589.

Dismissal for failure to have judgment entered. See note ante, § 6714.

Forgetfulness as ground for vacating judgment by default. See note ante, § 6589.

In case of amended complaint. See note ante, § 6588.

Setting aside order vacating a judgment by default. See note ante, § 6589.

The provision of the second subdivision of this section, concerning the entry of default of the defendant, is directory only, not mandatory. *State v. District Court*, 46 Mont. 348, 355, 128 Pac. 582.

If the defendant, where his demurrer to an amended complaint has been overruled, fails to file his answer within the time set by the court, the plaintiff is entitled to have default entered although the answer has been served upon his counsel, before the expiration of that time. *State (ex rel. Smotherman) v. District Court*, 50 Mont. 119, 145 Pac. 724.

The mere appearance of a defendant does not prevent his default from being entered; judgment by default may be had when there has been a failure to do the things indicated by this section. *Donlan v. Thompson Falls C. & M. Co.*, 42 Mont. 257, 264, 112 Pac. 445.

A motion to dissolve a temporary injunction does not constitute an appearance. *Donlan v. Thompson Falls Copper & M. Co.*, 42 Mont. 257, 265, 112 Pac. 445.

Editorial Notes.

Process, effect of defects in the service of. 61 Am. St. Rep. 485.

Right to take judgment by default when motion by defendant is pending. Ann. Cas. 1913E, 331.

Validity of judgment by default rendered against person in custody. Ann. Cas. 1913C, 245.

TRIAL.

§ 6723.

New trial. See note post, § 6793.

How an issue of fact arises. See note post, 6793.

In an action to enforce payment of a promissory note, a denial of knowledge or information sufficient to form a belief as to the truth of an allegation that the note has not been paid raises an issue; the allegation of nonpayment is a material and essential allegation in an action of this character. *First Nat. Bank v. Silver*, 45 Mont. 231, 235, 122 Pac. 584.

§ 6724.

Province of the court. See note post, § 6761.

If the pleadings present issues of fact, *prima facie* each party is entitled to have a jury determine them; but, if, during the trial, it becomes apparent that there are no such issues in the evidence, the decision falls within the province of the court. *Consolidated etc. Min. Co. v. Struthers*, 41 Mont. 565, 573, 111 Pac. 152.

Editorial Notes.

Questions of law or fact, 14 L. R. A., 559.

§ 6729.

A postponement, because of the absence of witnesses, ought to be granted, on motion, whenever the facts shown upon the application would authorize the court, under section 6589, ante, to relieve a party from a judgment. *Meredith v. Roman*, 49 Mont. 204, 215, 141 Pac. 643.

The power to grant or refuse a postponement on any ground is vested in the discretion of the court, and its exercise is not reviewable where no prejudice to the complaining party is shown. *Downs*

v. Cassidy, 47 Mont. 471, 475, Ann. Cas. 1915B, 1155, 133 Pac. 106.

It is indispensably necessary that the affidavit for a postponement, on the ground that witnesses are absent, contain a showing of diligent effort to secure their presence. *Meredith v. Roman*, 49 Mont. 204, 215, 141 Pac. 643.

Editorial Notes.

Absence of counsel as ground for continuance. Ann. Cas. 1913C, 431.

Continuance because of illness of party. 42 L. R. A. (N. S.) 660.

JURY TRIAL.**§ 6740.**

"Each party" means each side or each party litigant, and not each person of whom the respective sides or parties litigant are made up; each side is entitled to only four challenges. *Mullery v. Great Northern Ry. Co.*, 50 Mont. 408, 148 Pac. 323.

Nominal defendants, who are in fact hostile to each other, are "parties litigant," and are entitled to challenge as such within the meaning of this section; but, if no conflict of interest is shown they constitute but one party defendant, and are limited to four peremptory challenges. *Mullery v. Great Northern Ry. Co.*, 50 Mont. 408, 148 Pac. 323.

If the plaintiff has used two of his four peremptory challenges, and has waived his third and fourth, he cannot subsequently challenge the juror placed in the box to fill the vacancy caused by the exercise of the defendant's fourth challenge, especially in an equity case. *O'Malley v. O'Malley*, 46 Mont. 549, 555, Ann. Cas. 1914B, 662, 129 Pac. 501.

Editorial Notes.

Right to interpose challenge to array of jurors in absence of statute. Ann. Cas. 1912A, 1137.

§ 6741.

In civil practice, the legislature has not changed the rule of the common law which excludes jurors upon the ground of actual bias, although a material change has been in this respect, in criminal practice, by section 9264 of the Revised Codes. *Shane v. Butte Elec. Ry. Co.*, 37 Mont. 599, 602, 97 Pac. 958.

A juror cannot be said to be fair and impartial, who has formed an opinion which will take evidence to remove and who entertains a prejudice against the class to which the defendant belongs, although he states that his opinion is based on newspaper report or common rumor and he can fairly try the case according to the evidence. *Shane v. Butte Elec. Ry. Co.*, 37 Mont. 599, 601, 97 Pac. 958.

Editorial Notes.

Challenge of jurors on account of preconceived opinion. 36 Am. Dec. 521.

Bias, or prejudice or interest which disqualifies juror. 9 Am. St. Rep. 744.

Voir dire, right of counsel to examine juror upon to determine whether to exercise right of peremptory challenge. 109 Am. St. Rep. 563.

Prejudice against capital punishment as constituting disqualification of juror in criminal case. Ann. Cas. 1912A, 786.

Relationship to witness as constituting disqualification of juror. Ann. Cas. 1912B, 1060.

Sympathy for plaintiff in action for personal injuries as bias sufficient to constitute disqualification of juror. Ann. Cas. 1912B, 1183.

Sympathy for laboring men generally as sufficient ground for challenge of juror for cause. Ann. Cas. 1913A, 1279.

Opinions gained from newspapers as disqualifying juror in criminal case. 35 L. R. A. (N. S.) 988.

§ 6746.

The provisions of this section apply only to instructions given; if instructions requested are refused, an exception should be taken and settled in a bill of exceptions or statement of the case. *Billings Realty Co. v. Big Ditch Co.*, 43 Mont. 251, 261, 115 Pac. 828.

This section declares that all instructions, both those given and those refused, shall be indorsed by the judge and filed as a part of the record in the case; and was enacted, seemingly, without attention to, or notice of, the provisions of sections 6784 and 6806, post. *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 246, 99 Pac. 837.

The supreme court cannot, under subdivision 5 of this section, reverse a judgment and direct a new trial for error in any instruction, unless specific objec-

tion was made to it, pointing out the error alleged, at the time of settlement in the trial court, and an exception preserved to the action of the court in overruling the objection. *Poor v. Madison River Power Co.*, 41 Mont. 236, 240, 108 Pac. 645.

A party who desires a more specific instruction than the one given must offer one to conform with his view of the law; this section has not obviated the necessity of doing so. *Heitman v. Chicago etc. Ry. Co.*, 45 Mont. 406, 414, 123 Pac. 401.

Where, at the close of the plaintiff's case, it is stipulated that if he is entitled to judgment in an action on a contract for the lease of sheep, it is to be for a certain amount, the defendant, relying on counterclaims for damages, has the burden of proof and the right to open and close the argument. *Power v. Turner*, 37 Mont. 521, 542, 97 Pac. 950.

In civil cases, instructions cannot be reviewed on appeal, without a bill of exceptions, specifically pointing out the particular objection made at the time of the settlement of the instructions. *State v. Cook*, 42 Mont. 329, 331, 112 Pac. 537.

Errors in instructions, not called to the attention of the trial court, will not be noticed on appeal. *Allen v. Bear Creek Coal Co.*, 43 Mont. 269, 286, 115 Pac. 673.

In reviewing instructions, the supreme court is limited to objections made at the time the instructions were settled. *Frederick v. Hale*, 42 Mont. 153, 166, 112 Pac. 70.

To insure review on appeal, the whole charge, or such parts of it as will illustrate the point upon which the objecting party relies as error in the charge, as well as the instructions requested and refused, should, since the adoption of this section, be incorporated in a bill of exceptions. *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 247, 99 Pac. 837.

The supreme court will not consider an assignment of error based upon the giving or refusing of instruction, unless there was a timely and proper objection made, and an exception saved to the ruling of the court. *Yergy v. Helena L. & Ry. Co.*, 39 Mont. 213, 240, 18 Ann. Cas. 1201, 102 Pac. 310.

To obtain a review of instructions given, or of instructions requested and refused, there must, in view of this section and of section 6785, post, be a bill of exceptions, specifically pointing out the particular objection made at the time of the settlement. *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 247, 99 Pac. 837.

Counsel must state his objection to any particular instruction, and, if the objection is overruled, reserve his exception; orderly procedure requires this to be done concerning all other rulings regarded as objectionable. *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 246, 99 Pac. 837.

Editorial Notes.

Effect of denial of right to open and close. Ann. Cas. 1912D, 257.

Right of court to reopen case after submission to jury for reception of additional evidence. Ann. Cas. 1913C, 1010.

Instructions, how to obtain and how to obtain review of errors in giving or refusing. 99 Am. Dec. 118.

§ 6747.

In an action for personal injuries, the court acts within its jurisdiction in refusing the defendant's request that the jury be taken to a mine, a considerable distance away, for the purpose of inspecting the machinery by which the plaintiff was injured; drawings of the machinery being presented to the jury and the jurors stating they understand the situation. *Stephens v. Elliott*, 36 Mont. 92, 104, 92 Pac. 45.

The purpose of the view provided for herein is to enable the jury to apply the testimony of the witnesses to the observed conditions about which they have spoken, and also to determine the truth of statements made by them with reference to these conditions. *Ferris v. McNally*, 45 Mont. 20, 31, 121 Pac. 889.

§ 6749.

The jury may be permitted to take the pleadings with them, to study the issues for themselves; but the practice of setting forth, in the instructions, a clear and concise statement of the nature of the case and the issues to be determined is to be commended. *Frederick v. Hale*, 42 Mont. 153, 167, 112 Pac. 70.

Editorial Notes.

Right of jury to take to jury-room affidavit admitted as testimony of absent witness. Ann. Cas. 1913C, 498.

Right of jury to take with them on retirement paper containing calculation or estimate by party as to amount due him. Ann. Cas. 1913C, 937.

§ 6756.

The plain purpose of this section is to prevent the receipt of informal or insufficient verdicts; it does not extend to matters going to the substance, that do not appear upon their face; if a verdict covers the issue and is complete on its face, the court must receive it. *Harrington v. Butte etc. Ry. Co.*, 36 Mont. 483, 93 Pac. 640.

Where, upon the polling of the jury in a personal injury case, the court inquires whether the verdict for the plaintiff has been reached by chance, and, several of the jurors answering in the affirmative, the court then directs them to retire and find a verdict by "deliberation and reasoning," and to exclude the element of

chance, the action of the court is unauthorized; the verdict returned should have been received, subject to be set aside only upon application under section 6794, post. *Harrington v. Butte etc. Ry. Co.*, 36 Mont. 483, 93 Pac. 640.

§ 6757.

A special verdict should find all the facts necessary to enable the court to determine, by the consideration of the pleadings and the verdict alone, which party is by law entitled to a judgment, without reference to the evidence. *Coburn Cattle Co. v. Small*, 35 Mont. 288, 293, 88 Pac. 953.

In an action against a county treasurer to recover taxes paid on certain cattle a special verdict is insufficient to warrant judgment for the plaintiff, where such verdict fails to find all the facts necessary to enable the court to determine, by a consideration of the pleadings and the verdict alone, which party is by law entitled to a judgment, without reference to the evidence. *Coburn Cattle Co. v. Small*, 35 Mont. 288, 293, 88 Pac. 953.

In claim and delivery, a verdict that does not find upon the material issue as to whether the defendant ever took the property from the plaintiff, or detained the same, is insufficient to support a judgment. *Hickey v. Breen*, 40 Mont. 368, 374, 20 Ann. Cas. 429, 106 Pac. 881.

Editorial Notes.

What special verdict must contain.
24 L. R. A. (N. S.) 1.

§ 6758.

Special findings in a personal injury case control the general verdict. *Mitchell v. Boston etc. Min. Co.*, 37 Mont. 575, 590, 97 Pac. 1033.

The court may, in its discretion, submit to the jury a particular question of fact, and require them to find upon it; but it is not bound to do so. *Poor v. Madison River Power Co.*, 41 Mont. 236, 242, 108 Pac. 645.

The practice of submitting special interrogatories to the jury is to be commended, as tending to promote justice. *Rairden v. Hedrick*, 46 Mont. 510, 517, 129 Pac. 498.

The practice of more frequently instructing juries to find upon particular questions of fact is recommended; thereby, the necessity for granting new trials would be greatly diminished and much unnecessary expense and delay be avoided. *O'Meara v. McDermott*, 40 Mont. 38, 58, 104 Pac. 1049.

Where in an action for injuries from a premature explosion of dynamite alleged to be due to using stronger explosives than proper or customary, with-

out warning plaintiff, the jury returned a general verdict for plaintiff, and found specially that plaintiff had been warned, that he knew the stronger powder was used, and that the use of such powder was proper, the special findings were inconsistent with the general verdict, and the defendant was entitled to judgment upon such findings. *Johnson v. Butte Alex Scott Copper Co. (Mont.)*, 149 Pac. 717.

§ 6760.

In replevin the verdict should, in terms, dispose of all the issues submitted to the jury. *Woods v. Latta*, 35 Mont. 9, 22, 88 Pac. 402.

Power of jury, in claim and delivery, to award damages. *Chesnut v. Sales*, 49 Mont. 318, 323, 52 L. R. A. (N. S.) 1199, 141 Pac. 986.

In an action of claim and delivery, a judgment that the party entitled to the possession of the property in controversy shall have it, or, in case the property itself cannot be recovered, then such party to have its value, is proper under this section. *Chesnut v. Sales*, 44 Mont. 534, 547, 121 Pac. 481, 49 Mont. 318, 52 L. R. A. (N. S.) 1199, 141 Pac. 986.

The verdict, in an action of claim and delivery, conforms substantially with the requirements of this section, where it contains a general finding in favor of the plaintiff together with a finding of value. *Sullivan v. Girson*, 39 Mont. 274, 276, 102 Pac. 320.

Editorial Notes.

Necessity that verdict in replevin give separate valuation of several articles involved. *Ann. Cas.* 1912D, 849.

Effect on verdict in replevin of failure to find unlawful taking or detention. *20 Ann. Cas.* 430.

Requisites of special verdict in replevin. *24 L. R. A. (N. S.)* 18.

§ 6761.

Nonsuit. See note ante, § 6714.

This section permits a directed verdict when the case presents only questions of law, but it does not, in any way, enlarge the powers of the court as applied to the facts. *Dunseth v. Butte Electric Ry. Co.*, 41 Mont. 14, 25, 21 Ann. Cas. 1258, 108 Pac. 567.

Where the evidence, in a case being tried before a jury, is such that reasonable men can come to but one conclusion thereon, the court may as the case requires, direct a verdict for the party entitled to it, or withdraw the case from the jury and render judgment. *Milwaukee Land Co. v. Ruesink*, 50 Mont. 489, 148 Pac. 396.

When one side of a case is without proof, the case is stripped of questions of

fact, and presents only a question of law for decision by the court. Consolidated etc. *Min. Co. v. Struthers*, 41 Mont. 565, 573, 111 Pac. 152.

A judgment on a directed verdict may or may not be a judgment on the merits; whether it is or not depends upon the question decided by the court and the scope of the ruling. *Dunseth v. Butte Electric Ry. Co.*, 41 Mont. 14, 21, 21 Ann. Cas. 1258, 108 Pac. 567.

Whether there is any substantial evidence in the case, made by the party upon whom the burden rests, is always a question of law; if there is not, the court ought to withdraw the case from the jury and direct judgment. *Escallier v. Great Northern Ry. Co.*, 46 Mont. 238, 252, Ann. Cas. 1914B, 468, 127 Pac. 458.

If the plaintiff has established his claim by clear and satisfactory evidence, and the evidence for the defendant consists merely of an affidavit, which is hearsay, the court is authorized to direct a verdict for the plaintiff. *Bean v. Missoula Lumber Co.*, 40 Mont. 31, 37, 104 Pac. 869.

It is not important in cases of failure of proof, whether the court directs the

jury to render a verdict for either party, or discharges the jury and renders judgment; in either case the result is the decision of the court. Consolidated etc. *Min. Co. v. Struthers*, 41 Mont. 565, 573, 111 Pac. 152.

It cannot prejudice the rights of the parties, though the formal procedure prescribed by this section is not pursued; the decision is, in any event, that of the court. Consolidated etc. *Min. Co. v. Struthers*, 41 Mont. 565, 573, 111 Pac. 152.

Editorial Notes.

Mere scintilla of evidence as sufficient to justify submission of cause to jury. Ann. Cas. 1914B, 472.

Right of court to direct verdict in favor of one codefendant at close of plaintiff's case. Ann. Cas. 1912D, 1061.

Effect of request by both parties for direction of verdict. Ann. Cas. 1913C, 1342.

Waiver of exception to denial of application to take case from jury by subsequent introduction of evidence. Ann. Cas. 1914A, 146.

TRIAL BY COURT.

§ 6762.

The parties may waive a jury, but only in the manner prescribed by law. Consolidated etc. *Min. Co. v. Struthers*, 41 Mont. 565, 572, 111 Pac. 152.

§ 6763.

See note post, § 6764.

Failure to find. See note post, § 6766.

This section is merely directory; the court's failure to render a decision; within the time limited, does not deprive it of jurisdiction to decide at a later date. *Toole v. Weirick*, 39 Mont. 359, 365, 133 Am. St. Rep. 576, 102 Pac. 590.

This section requires findings of fact to be made by the court, when it tries a question of fact, whether such findings are requested or not; while it is true that, under section 6766, post, error cannot be predicated upon the trial court's refusal to make findings, unless requested, the failure of counsel to make the request does not relieve the court of its duty. *Billings Realty Co. v. Big Ditch Co.*, 43 Mont. 251, 262, 115 Pac. 828.

While it is, under this section and section 6765, post, incumbent upon the trial court, in every case tried without a jury, to make findings unless they are waived by the parties, yet the party who fails to pursue the course pointed out in sections 6767 and 6768 cannot complain either that the duty enjoined by section 6764 has been omitted, or that the result of an effort to perform it is defective. *Featherman v. Hennessy*, 43 Mont. 310, 314, 115 Pac. 983.

Section 6766, post, does not excuse the judge from making findings. *Bordeaux v. Bordeaux*, 43 Mont. 102, 106, 115 Pac. 25.

Whether requested or not, it is the duty of the judge to make written findings upon all material issues of fact made by the pleadings in a suit for divorce, though the case was tried by a jury; this duty becomes imperative, where timely request is made, and a refusal is reversible error. *Bordeaux v. Bordeaux*, 43 Mont. 102, 107, 115 Pac. 25.

§ 6764.

Failure to find. See note post, § 6766.

See note ante, § 6763.

In every case specific findings should be made upon all material issues of fact raised by the pleadings, followed by the appropriate conclusions of law, indicating the judgment to be entered thereon. *Bordeaux v. Bordeaux*, 43 Mont. 102, 108, 115 Pac. 25.

§ 6765.

Duty of court to make findings. See note ante, § 6763.

§ 6766.

Duty of court to make findings. See note ante, § 6763.

When no requests in writing have been made for special finding in water right contest, the failure of the court to make them is not cause for a reversal of the judgment. *Gans & Klein Inv. Co. v. Sanford*, 35 Mont. 300, 88 Pac. 955.

It is not the imperative duty of the trial court to make special findings, when not requested to do so upon the submission of the cause; to obtain special findings a party must make a request in writing for them, and have his request entered in the minutes of the court; if this is not done, a judgment will not be reversed for want of findings. *State v. Edwards*, 40 Mont. 287, 299, 20 Ann. Cas. 239, 106 Pac. 695.

It is the duty of the district court to make findings upon a proper request therefor; if, however, they are so lacking in substance, when given, as to amount to no findings at all, the case is one not of defective findings, but one demanding a reversal of the decree for want of findings to justify it. *City of Helena v. Hale*, 38 Mont. 481, 484, 100 Pac. 611.

A complaint that the trial court failed to make special findings, as required by section 6763, ante, is unavailing, if the appellant did not request them. *Farwell v. Farwell*, 47 Mont. 574, 578, Ann. Cas. 1915C, 78, 133 Pac. 958.

Notwithstanding this section, the duty of the judge, under section 6763, ante, to make findings, becomes imperative, when timely request is made therefor. *Bordeaux v. Bordeaux*, 43 Mont. 102, 108, 115 Pac. 25.

Though a finding is defective, the decree will not, for that reason, be reversed, where no exception was made in the trial court because of such defect, and the exception reserved in a bill, if, by any reasonable construction, the finding supports the decree. *Featherman v. Hennessy*, 43 Mont. 310, 314, 115 Pac. 983.

Though findings are not specific, but in general terms, every finding upon any issue necessary to support the judgment is to be implied. *Esselstyn v. Holmes*, 42 Mont. 507, 515, 114 Pac. 118.

If the existence of a particular fact is necessary to support the decree, it will be deemed to have been found, by implication, if the issues warrant such a finding, where the record does not disclose that there was any request for an express finding as to such fact. *Hansen v. Larsen*, 44 Mont. 350, 352, 120 Pac. 229.

If a case is submitted to the court without a jury, and the evidence justifies but one conclusion, formal findings are unnecessary, though a request be made for them in conformity with this section. *Milwaukee Land Co. v. Ruesink*, 50 Mont. 489, 148 Pac. 396.

If a case is submitted to the court without a jury, and the evidence justifies but one conclusion, judgment will not be reversed where a request for findings was

disregarded. *Milwaukee Land Co. v. Ruesink*, 50 Mont. 489, 148 Pac. 396.

Where suit to fix rights of the parties to the waters of a stream was tried to the court, the trial court cannot be put in error for failure to make findings in absence of request. *Joyce v. McDonald* (Mont.), 149 Pac. 953.

§ 6767.

Exceptions not required, when. See note post, § 6784.

See note ante, § 6763.

Judgment will not be reversed by the supreme court, because of defects in findings made, or in any of them, though exceptions were reserved because of such defects; that court will simply ignore the formal findings, and, upon examination of the whole of the evidence, determine whether the conclusion reached thereon by the trial court was correct. *Milwaukee Land Co. v. Ruesink*, 50 Mont. 489, 148 Pac. 396.

Where suit to fix rights of the parties to the waters of a stream was tried to the court, the trial court cannot be put in error because of defective findings not specifically excepted to. *Joyce v. McDonald* (Mont.), 149 Pac. 953.

§ 6768.

Exceptions not required, when. See note post, § 6784.

See note ante, § 6763.

This section does not declare that a decree cannot be entered until at least five days, or any other period, after the filing of findings of fact and conclusions of law; no interval of time is required to elapse between the making of the finding and conclusion and the entering of the decree. *Gans & Klein Inv. Co. v. Sanford*, 35 Mont. 295, 88 Pac. 955.

When no requests in writing have been made for special findings in a water right contest, the failure of the court to make them is not cause for a reversal of the judgment. *Gans & Klein Inv. Co. v. Sanford*, 35 Mont. 295, 300, 88 Pac. 955.

§ 6769.

An agreed statement of facts, upon which a case is tried, has the effect of a finding of facts. *Hale v. County of Jefferson*, 39 Mont. 137, 141, 101 Pac. 973.

The purpose of a stipulation that a certain thing is a fact, is to relieve the parties from the necessity of introducing evidence as to the ultimate fact covered by it; if the fact is material, the court is, as to it, bound by the stipulation; it amounts to a special finding. *Spaulding v. Stone*, 46 Mont. 483, 487, 129 Pac. 327.

REFERENCE.

§ 6771.

A writ of supervisory control to compel the vacation of an order of reference made by the district court, in an action

on a contract wherein the plaintiff claimed to be entitled to commissions, was refused in *State v. District Court*, 37 Mont. 226, 95 Pac. 843.

Editorial Notes.

Power to submit causes to referees.
79 Am. Dec. 207.

Right to order compulsory reference
in equitable action independently
of statute. Ann. Cas. 1912D, 1136.

Compulsory reference as denial of
constitutional right to jury trial.
25 L. R. A. 68; 13 L. R. A. (N. S.)
146; 39 L. R. A. (N. S.) 46.

EXCEPTIONS.

§ 6781.

Direction of verdict for fraud. See note ante, § 4980.

§ 6784. What Deemed Excepted to.

Every order, ruling and decision of every kind or nature and every verdict, finding, decree or judgment is to be deemed excepted to, and it shall not be necessary to ask for or note an exception, and no bill of exceptions need be settled or filed except where and when hereafter expressly required by law or by a rule of the supreme court.

Provided, however, that nothing herein shall be deemed to dispense with the filing of exceptions required in the case of defective findings by sections 6767 and 6768 of said Revised Codes, but in such case no subsequent bill of exceptions need be settled; and

Provided, further that nothing herein shall be deemed to apply to the proceedings for the settlements of instructions, nor to affect or modify the provisions of section 6746 of said codes relating to instructions and the settlement thereof nor to dispense with the objections thereby required, or the making of a record of such objections and proceedings in a bill of exceptions or statement of the case or in some other manner now or hereafter provided by law or rule of court, except to the following extent, to wit: It shall not be necessary to take or note an exception to the ruling or action of the court in deciding to give or in refusing an instruction, or part of an instruction, or in modifying an instruction, or in sustaining or overruling objections to proposed instructions; and it shall not be necessary to incorporate in any such bill or statement any evidence or other matter, if such evidence or other matter may, under the law or rules of court, be brought before the supreme court, in some other manner, for consideration in connection with alleged errors in instructions or the settlement thereof.

Nothing herein shall be deemed to prohibit the settlement of a bill of exception or a statement of the case, and, if desired, the same may be done as in such cases provided; nor shall anything be deemed to dispense with the making of objections where objections are not required. [Amendment approved March 9, 1915; Laws 1915, p. 298.]

This section has, since the adoption of section 6746, ante, become obsolete, so far as it includes the instructions as a part of the record for review, without a bill of exceptions, embodying the objections of the party to the action of the court thereon; this implies, also, to instructions requested and refused. *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 247, 99 Pac. 837.

The findings as made constitute a part of the judgment-roll; and the sufficiency of the evidence to justify the findings in a water right suit may be raised on motion for a new trial and reviewed on appeal without formal exceptions; the law

reserves an exception for that purpose; hence, a formal bill of exceptions is not required. *Conrow v. Huffine*, 48 Mont. 437, 447, 138 Pac. 1094.

An order sustaining a motion to strike out a portion of an answer is deemed excepted to. *Bordeaux v. Bordeaux*, 43 Mont. 102, 106, 115 Pac. 25.

An order of the district court, sustaining a motion to dismiss an action, on appeal to it from a justice's court, is a "final decision"; as such, it is deemed to have been excepted to, and, to preserve the exception, no formal bill is required. *Mettler v. Adamson*, 38 Mont. 198, 200, 99 Pac. 441.

§ 6785.

Application of section to review of instructions. See note post, § 7112.

It is not necessary for a party to specify in his notice of intention to move for a new trial, the particulars in which the evidence is claimed to be insufficient to justify the verdict. *Ettien v. Drum*, 35 Mont. 81, 89, 88 Pac. 659.

A bill of exceptions is not required to contain any specification of error. *Milwaukee Gold etc. Co. v. Gordon*, 37 Mont. 223, 95 Pac. 995.

§ 6787.

Procedure in preparation of bill of exceptions. See also, post, § 6788.

This section regulates the settlement of bills of exceptions presented at the time the decision was made; it dispenses with notice to the adversary party; but in all other cases, the procedure prescribed by section 6788, post, controls, and notice is essential. *State (ex rel. Pilot Butte Min. Co.) v. District Court*, 50 Mont. 585, 148 Pac. 383.

Editorial Notes.

Effect on bill of exceptions of neglect of judge to sign same within time required by law. *Ann. Cas. 1913A, 914.*

§ 6788.

Application of section. See ante, § 6787.

Procedure in preparation of bill of exceptions. See also ante, § 6787.

Extension of time. See note post, § 7190.

This section may be complied with in three ways; but when the moving party has lost his standing by failing to pursue one of these methods selected by him, he cannot restore it by claiming that he has substantially pursued either of the other prescribed methods. *Freeman v. Weare*, 42 Mont. 472, 474, 113 Pac. 466.

This section has been substantially complied with, where the plaintiff company served and delivered to the clerk its proposed bill of exceptions; where the clerk handed the proposed bill to the trial judge; where the defendant's counsel afterward delivered his proposed amendments to the judge; and where the judge then set a date for the settlement of the bill. *Best Mfg. Co. v. Hutton*, 49 Mont. 78, 88, 141 Pac. 653.

A party complies with the law if, within ten days after the amendments to a bill of exceptions are served, he either presents the proposed bill and amendments to the judge, upon five days' notice to the adverse party, or delivers them to the clerk, or delivers them to the judge. *Girard v. McClernan*, 39 Mont. 523, 528, 105 Pac. 224.

Since the code amendment of 1907, there is no such thing as a statement on motion for a new trial. *Milwaukee Gold etc. Co. v. Gordon*, 37 Mont. 209, 223, 95 Pac. 995.

Circumstances under which the certificate of a judge, attached to a bill of exceptions, though informal and indefinite in failing to specifically state that the bill "is allowed," may be assumed, in all respects, to be in substantial compliance with the statute. *Ferguson v. Parrott*, 36 Mont. 354, 92 Pac. 965.

It is clearly implied, under this section, when a bill of exceptions and amendments thereto have been delivered to the judge, that he shall settle the same immediately, or fix a subsequent date for settlement, and, when delivered to him within the time limited by statute, it becomes his duty to settle and sign the bill at that time or at such future time as he may designate. *Girard v. McClernan*, 39 Mont. 523, 529, 105 Pac. 224.

If the party who seeks the settlement of a bill of exceptions, fails to present the bill, with amendments, which are objected to, to the judge, but not within ten days after service of the amendments, nor upon five days' notice to the adverse party, the bill must be disregarded. *Freeman v. Weare*, 42 Mont. 472, 474, 113 Pac. 466.

If a party who seeks the settlement of a bill of exceptions, fails to present the bill, with amendments, which are objected to, to the judge, within ten days after service of the amendments and upon five days' notice to the adverse party, the defect is not cured by the withdrawal of his objections to the amendments, after the lapse of the ten days and on the day designated in the notice of settlement. *Freeman v. Weare*, 42 Mont. 472, 474, 113 Pac. 466.

The moving party has the duty of presenting the proposed statement on motion for new trial and amendments to the judge within ten days from the date upon which the amendments were served. *State ex rel. Coleman v. District Court (Mont.)*, 149 Pac. 973.

The court may grant extensions of time for the preparation of the documents to be made the basis of the motion. *Evans v. Oregon Short Line R. Co. (Mont.)*, 149 Pac. 715.

§ 6792.

Review of ruling against the respondent. See post, § 7118.

By virtue of this section and of section 7118, post, the exceptions of both parties may be incorporated in the record, and the prevailing party is always in a position to inform the supreme court that he has not been permitted to introduce all of his evidence. *State v. District Court*, 40 Mont. 206, 211, 105 Pac. 721.

NEW TRIAL.

§ 6793.

New trials and appeals in probate proceedings. See post, § 7712.

Issue of fact, how raised. See ante, § 6723.

An "issue of fact" is an issue arising upon formal pleadings only. In *re Antonoli's Estate*, 42 Mont. 219, 223, 111 Pac. 1033.

The expression "issue of fact" refers to an issue arising upon formal pleadings only; and, unless such an issue has been raised in the manner prescribed by section 6723, ante, and tried, there is nothing which can be reviewed on a new trial. *State (ex rel. Culbertson Ferry Co.) v. District Court*, 49 Mont. 595, 600, 144 Pac. 159.

Controversies which do not arise upon written pleadings authorized or required by statute do not fall within the purview of this section. *State (ex rel. Culbertson Ferry Co.) v. District Court*, 49 Mont. 595, 598, 144 Pac. 159.

A new trial lies for the re-examination of an issue of fact created in the manner prescribed by section 6723, ante, but not under any other circumstances. *State (ex rel. Culbertson Ferry Co.) v. District Court*, 49 Mont. 595, 599, 144 Pac. 159.

There can be no new trial where there is no issue of fact presented by the pleadings to be re-examined. *State (ex rel. Culbertson Ferry Co.) v. District Court*, 49 Mont. 595, 601, 144 Pac. 159.

The court's action in ordering the damages to be assessed by a jury, in actions *ex delicto*, where the defendant has failed to answer or the plaintiff to reply, is not the trial of an issue of fact raised by the pleadings. *State (ex rel. Culbertson Ferry Co.) v. District Court*, 49 Mont. 595, 599, 144 Pac. 159.

§ 6794.

Remedy against judgment by default. See note ante, § 6589.

May be made upon what papers. See note post, § 6795.

Impeachment of verdict by jurors, in criminal cases. See note post, § 9350.

Retention of jurisdiction after appeal. See note post, § 7107.

Sustaining order granting new trial. See note post, § 7118.

Verdict where evidence is conflicting. See note post, § 8028.

Verdict where evidence is not conflicting. See note post, § 8028.

An instruction is the law of the case and is binding upon the jury; hence, a verdict contrary thereto is a verdict contrary to law, which, under the sixth subdivision of this section, justifies a new trial. *Lynes v. Northern Pac. Ry. Co.*, 43 Mont. 317, 325, Ann. Cas. 1912C, 183, 117 Pac. 81.

In all cases, except libel, the jury are bound by the instructions of the court, and a verdict contrary to them will be set aside as against law. *Harrington v. Butte Miner Co.*, 48 Mont. 550, 553, 51 L. R. A. (N. S.) 369, 139 Pac. 451.

The court's instructions, in an action for libel, to the extent of determining whether the publication complained of is or is not libelous, are advisory only and, under a constitutional provision empowering the jury, under the direction of the court, to determine the law and the facts, may be disregarded by the jury; hence, a general verdict in favor of the defendant, contrary to the directions of the trial court, is not a ground for granting a new trial. *Harrington v. Butte Miner Co.*, 48 Mont. 550, 555, 51 L. R. A. (N. S.) 369, 139 Pac. 451.

The statute prescribes the grounds upon which a motion for new trial may be made, and its provisions are exclusive. *Evans v. Oregon Short Line R. Co. (Mont.)*, 149 Pac. 715.

A verdict arrived at by taking the aggregate of the amounts representing the views of the jurors and dividing that sum by the number of jurors as a means of ascertaining the average or as a basis for further consideration is valid, unless the jurors agree in advance that the quotient thus obtained shall constitute the amount of their verdict, and such agreement is carried into effect. *Great Northern Ry. Co. v. Benjamin (Mont.)*, 149 Pac. 968.

In cases where the damages are clearly excessive, the plaintiff may be required, either in the district court or in the supreme court, to remit a part of the amount awarded by the jury or submit to a new trial. *Yergy v. Helena L. & Ry. Co.*, 39 Mont. 213, 242, 18 Ann. Cas. 1201, 102 Pac. 310.

When an award of damages has been measured by the passion and prejudice of the jury, rather than by an estimate made in the exercise of their discretion, it becomes the duty of the court to set it aside; and the conclusion is irresistible that the award was so measured when it is so large that it cannot be accounted for on any other theory, and is wholly out of proportion to the wrong done and the cause of it. *De Celles v. Casey*, 48 Mont. 568, 576, 139 Pac. 586.

If the jury returns a verdict for the plaintiff, for an amount less than the evidence shows that he is entitled to receive, he may, under the sixth subdivision of this section, have a new trial upon the ground that the evidence is insufficient to sustain the verdict. *Flaherty v. Butte Elec. Ry. Co.*, 42 Mont. 89, 92, 111 Pac. 348.

Where, in a personal injury case, excessive damages have been awarded, the defeated party has the right to insist that the amount of the verdict be reduced by

the court. *Chenoweth v. Great Northern Ry. Co.*, 50 Mont. 481, 148 Pac. 331.

In an action for personal injuries, the court has power to grant a new trial where excessive damages have been awarded, if they appear to have been given under the influence of passion or prejudice. *Chenoweth v. Great Northern Ry. Co.*, 50 Mont. 481, 148 Pac. 331.

A new trial cannot be granted upon any other ground than those named in this section. *Canning v. Fried*, 48 Mont. 560, 564, 139 Pac. 448.

Remarks made by the court during a trial, if errors at all, fall within subdivision 1 of this section; they do not constitute errors of law within the meaning of subdivision 7. *Hopkins v. Kitts*, 37 Mont. 28, 94 Pac. 201.

Where the sufficiency of the complaint was not challenged during the trial, and there was no ruling in reference to it, there is nothing, as to that matter, which can be regarded as an "error of law occurring during the trial," upon which a motion for a new trial might be made; in such a case, the sufficiency of the complaint can be examined only on appeal from the judgment. *O'Rourke v. Grand Opera House Co.*, 47 Mont. 459, 464, 133 Pac. 965.

Where the verdict in a personal injury case may have been the result of a miscalculation, or based upon a wrong standard, the award cannot be said to have been the result of passion or prejudice, so as to entitle the defendant to a new trial. *Lewis v. Northern Pac. Ry.*, 36 Mont. 207, 224, 92 Pac. 469.

Where, upon the polling of the jury in a personal injury case, the court inquires whether the verdict for the plaintiff has been reached by chance, and, several of the jurors answering in the affirmative, the court then directs them to retire and find a verdict by "deliberation and reasoning," and to exclude the element of chance, the action of the court is unauthorized; the verdict returned should have been received subject to be set aside only upon an application under this section. *Harrington v. Butte etc. Ry. Co.*, 36 Mont. 478, 483, 93 Pac. 640.

Jurors should not be heard to impeach their own verdict, and the single exception, found in subdivision 2 of this section, that they may do so where the verdict has been reached by a resort to chance, is the only one in which it will be permitted; this express exception, under the rule, "expressio unius est exclusio alterius," seems to exclude all other exceptions. *Sutton v. Lowry*, 39 Mont. 462, 471, 104 Pac. 545.

Though the judge, in his certificate, states that "the evidence fails to support the judgment," yet, where counsel for the appellants make the statutory assignment in their brief, as shown in the sixth sub-

division of this section, that the evidence is insufficient to justify the court's decision, and counsel for the respondents have argued this assignment on the merits, the supreme court will assume that the judge intended to state in his certificate that the question of the insufficiency of the evidence to support the decision was properly submitted to and decided by him. *Foster v. Winstanley*, 39 Mont. 314, 324, 102 Pac. 574.

Editorial Notes.

New trial on court's own motion. Ann. Cas. 1914A, 412; 40 L. R. A. (N. S.) 291.

New trials, attorneys, misconduct of in argument as a ground for. 9 Am. St. Rep. 599; 100 Am. St. Rep. 689.

Evidence, admission of irrelevant or immaterial as a ground for new trials. 66 Am. Dec. 717.

Verdict, determination of by chance. 2 Am. Dec. 38.

Misconduct of juror as a ground for a new trial. 35 Am. Dec. 254.

Misconduct of jurors, other than their separation, for which a verdict may be set aside. 134 Am. St. Rep. 1033.

Use of intoxicating liquors by jury as ground for new trial. Ann. Cas. 1912A, 1322.

Furnishing refreshment to juror by successful party as ground for new trial. Ann. Cas. 1912B, 747.

New trial for misconduct of jury as resting in discretion of trial court. Ann. Cas. 1912D, 1018.

Disqualification of juror as ground for new trial. Ann. Cas. 1913A, 892; 18 L. R. A. 473.

Treating jurors. 19 L. R. A. (N. S.) 733.

Necessity for new trial where verdict is found contrary to erroneous instruction. 14 Ann. Cas. 973.

Newly discovered evidence of contradictory statements made by witness as ground for new trial. Ann. Cas. 1912D, 856.

What is cumulative evidence within rule excluding it when offered as newly discovered evidence in support of motion for new trial. Ann. Cas. 1913D, 157; 14 L. R. A. 609.

Right to new trial for newly discovered evidence which was not in existence when trial was had. Ann. Cas. 1913E, 147.

Surprise as ground for new trial. 78 Am. Dec. 518.

Presumption of prejudice from separation of jury. Ann. Cas. 1914A, 737.

Inadequacy of damages for personal injuries as grounds for setting aside verdict. Ann. Cas. 1914C, 849.

§ 6795.

"Minutes of the court." See note post, § 6796.

Record on appeal. See note post, § 6799.

There is now no such thing as a statement on motion for new trial. *Milwaukee Gold etc. Co. v. Gordon*, 37 Mont. 223, 95 Pac. 995.

Since the act of 1907, there is no provision authorizing a statement of the case to be used as the basis of a motion for a new trial. *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 234, 99 Pac. 837.

A motion for a new trial on the ground of irregularity in the proceedings of the court, jury, or adverse party may be made either upon affidavit, or bill of exceptions, or both. *Bliss v. Wolcott*, 40 Mont. 491, 497, 135 Am. St. Rep. 636, 107 Pac. 423.

A motion for a new trial, upon any ground other than those mentioned in the first four subdivisions of section 6794, ante, may be made under this section, 6795, either upon the minutes of the court or a bill of exceptions; and, if the movant has more than one ground, he may select one of these methods for one ground of his motion, and another for the remaining ground or grounds. *Moore v. Butte Electric Ry. Co.*, 47 Mont. 214, 216, 131 Pac. 635.

When an application for a new trial is made on the minutes of the court, the trial court is presumed, in the absence of a bill of exceptions, to have considered all of the pleadings, records, minute entries, and the evidence offered at the trial, and to have determined the motion on the case thus presented. *Sanden v. Northern Pac. Ry. Co.*, 39 Mont. 209, 211, 102 Pac. 145.

A statement in a notice of motion for a new trial, that the motion will be based "upon the minutes of said cause," is substantially the same as a statement that it will be based "upon the minutes of the court." *Moore v. Butte Electric Ry. Co.*, 47 Mont. 214, 216, 131 Pac. 635.

The statute prescribes the course of proceedings to be observed on motion for new trial, and the provisions are exclusive. *Evans v. Oregon Short Line R. Co.* (Mont.), 149 Pac. 715.

Editorial Notes.

Impeaching verdict by affidavits of jurors. 12 Am. Dec. 143; 24 Am. Dec. 475; 48 Am. Dec. 376; 31 L. R. A. (N. S.) 930.

Affidavits of jurors as evidence that verdict returned or entered differed from verdict actually found. Ann. Cas. 1912A, 1205.

Right of adverse party, on motion for new trial, to introduce counter-affidavits. Ann. Cas. 1912D, 1303.

Admissibility of affidavits of jurors in support of verdict. Ann. Cas. 1913B, 761.

§ 6796.

Stay of entry judgment. See note post, § 6800.

Record on appeal from new trial order. See post, § 7114.

Right to notice of entry of judgment. See note post, § 7149.

Settlement of bill of exceptions. See ante, § 6788.

Notice of motion for a new trial, given ten days before entry of judgment, is premature and therefore ineffective as a basis for the motion. *Power v. Turner*, 37 Mont. 521, 543, 97 Pac. 950.

It is not necessary for a party to specify, in his notice of intention to move for a new trial, the particulars in which the evidence is claimed to be insufficient to justify the verdict. *Ettien v. Drum*, 35 Mont. 81, 89, 88 Pac. 659.

While the moving party is required to state, in his notice, whether the motion will be made upon affidavits or a bill of exceptions or the minutes of the court, he is not required to pursue all of these methods and rely upon all the grounds indicated by the notice, though his notice states them all. *Doornbos v. Thomas*, 50 Mont. 370, 147 Pac. 277.

He who moves for a new trial may not notify his adversary that he will pursue one method, and thereafter change to another; nor may he state two or more methods in the alternative; but he may state all the methods conjunctively, and the abandonment of all except one is no reason why the motion should not be heard. *Doornbos v. Thomas*, 50 Mont. 370, 147 Pac. 277.

The grounds of a motion for a new trial can be disclosed only by the notice of intention, required by this section to be filed within ten days after the receipt of notice of the entry of judgment. *Canning v. Fried*, 48 Mont. 560, 564, 139 Pac. 448.

The point that notice of intention to move for a new trial was premature may be waived. *Kenyon-Noble L. Co. v. School District*, 40 Mont. 123, 126, 105 Pac. 551.

The presumption is, that the notice of intention was served and filed in time, unless the contrary affirmatively appears from the record. *Best Mfg. Co. v. Hutten*, 49 Mont. 78, 86, 141 Pac. 653.

Where both the notice of intention and the notice of appeal were served upon the only party who appears upon the record to have any interest in vacating the judgment, the service is good as against an objection that all the adverse parties were not served. *McIntyre v. MacGinniss*, 41 Mont. 87, 92, 93, 137 Am. St. Rep. 701, 108 Pac. 353.

The notice of the entry of judgment contemplated by this section is a legal notice; that is, such a one as is described in section 7145, post, and served in the

manner described in section 7146, post. *State v. District Court*, 38 Mont. 119, 124, 99 Pac. 139.

A letter to the plaintiff's counsel, written by the clerk of the court, informing him that a judgment for the defendant has been signed, is not a sufficient notice of the entry of judgment. *Best Mfg. Co. v. Hutton*, 49 Mont. 78, 87, 141 Pac. 653.

A notice of appeal, though given by two defendants, against whom separate verdicts have been rendered, is sufficient, though both notices are embodied in one paper, if they give the plaintiff all the information which the statute requires. *Cummings v. Reins Copper Co.*, 40 Mont. 599, 609, 107 Pac. 904.

If the litigant, who moves for a new trial, pursues one of the authorized methods, and the record made in pursuance thereof is so formulated as to present properly one or more of the statutory grounds, he is entitled to be heard upon the record as made. *Doornbos v. Thomas*, 50 Mont. 370, 147 Pac. 277.

A party intending to move for a new trial may do so by serving his notice within ten days after notice of the entry of judgment, but not before. *McIntyre v. MacGinniss*, 41 Mont. 87, 92, 137 Am. St. Rep. 701, 108 Pac. 353.

The mere asking for time in which to file a bill of exceptions, or stay of execution, does not necessarily imply the presence of counsel at the entry of judgment, or actual knowledge of such entry. *Best Mfg. Co. v. Hutton*, 49 Mont. 78, 86, 141 Pac. 653.

While the movant for a new trial may waive formal notice of the entry of judgment by instituting his proceedings in support of his motion without it, such waiver cannot be imputed to him where he inadvertently proceeds before he may properly do so. *McIntyre v. MacGinniss*, 41 Mont. 87, 92, 137 Am. St. Rep. 701, 108 Pac. 353.

Upon a motion for a new trial made "upon the minutes of the court," the trial court may take into consideration all the pleadings, records, minute entries, and the evidence offered at the trial, and, from the entire case thus presented, determine the motion; it is not even necessary that the stenographer's notes of the trial be transcribed, if the presiding judge can remember the evidence and the proceedings sufficiently to enable him to pass upon the motion. *State v. District Court*, 38 Mont. 119, 125, 99 Pac. 139.

Effect of stipulations, as to extension of time in which notice of motion for a new trial must be given. *Hill v. McKay*, 36 Mont. 440, 93 Pac. 345.

The moving party has the duty of presenting the purposed statement or motion for a new trial and amendments to the

judge within ten days from the date upon which the amendments were served. *State ex rel. Coleman v. District Court (Mont.)*, 149 Pac. 973.

To give the court jurisdiction over a motion for new trial, the notice of intention must be given within the time prescribed by the statute, but the court may give extensions of time for the preparation of the documents to be made the basis of the motion. *Evans v. Oregon Short Line R. Co. (Mont.)*, 149 Pac. 715.

§ 6797.

"Minutes of the court." See note ante, § 6796.

Review of questions of fact, on appeal, in equity cases. See ante, § 6253.

If a motion for a new trial, in an equity case, is passed upon by a different judge than the one who presided at the trial, he should be governed by the same rules followed by the supreme court, since the adoption of section 6253, ante, in reviewing questions of fact on appeals in equity cases, and not set aside the findings, unless they are clearly against the preponderance of the evidence. *Gibson v. Morris State Bank*, 49 Mont. 60, 72, 140 Pac. 76.

§ 6798.

Stay of entry of judgment. See note post, § 6800.

The fact that a district court has for years pursued the erroneous practice of granting a stay upon ex parte applications, without exacting security, does not endow the practice with the force of law. *State v. Clements*, 37 Mont. 100, 102, 127 Am. St. Rep. 705, 95 Pac. 845.

Assuming that the supreme court should, in a proper case, where a stay of proceedings has been ordered by the trial court, use the writ of mandamus to compel the requirement of security pending the motion for a new trial; the presumption must be indulged that the defendant regularly pursued his duty and that the order complained of was the result of the exercise of a wise discretion. *State v. Clements*, 37 Mont. 96, 100, 127 Am. St. Rep. 701, 94 Pac. 837.

Since a stay of execution results in delay and may defeat justice, the power to grant it should be exercised with caution and upon the exaction of some sort of security. *State v. Clements*, 37 Mont. 98, 127 Am. St. Rep. 701, 94 Pac. 837.

§ 6799.

See § 7120a, post.

"Minutes of the court." See note ante, § 6796.

Record on appeal from new trial order. See post, § 7114.

On appeal from a new trial order, made upon the minutes of the court, the record will be held to contain all the minutes, if it contains all the papers enumerated in this section and in section 7114, post, and the trial court's certificate of the statement of the case is that "it is true and correct"; as the only purpose of a statement of the case is to bring before the appellate court the minutes of the trial court, it follows that a true and correct statement contains all the minutes. *Sutton v. Lowry*, 39 Mont. 462, 469, 104 Pac. 545.

The statement herein referred to as a part of the record on appeal is to be made up after a motion for a new trial

has been disposed of. *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 234, 99 Pac. 837.

A document prepared as a statement of the case does not lose its character as such because it bears a double designation, namely, "a bill of exceptions or statement of the case," *Doornbos v. Thomas*, 50 Mont. 370, 147 Pac. 277.

The judgment-roll is sufficiently authenticated where each copy of the several papers composing the record is authenticated, though the judgment-roll is not authenticated by the clerk technically as such. *Doornbus v. Thomas*, 50 Mont. 370, 147 Pac. 277.

JUDGMENT.

§ 6800.

Modification of judgment to conform to verdict. See note post, § 7119.

Neither the reservation nor the stay mentioned in this section can be allowed *ex gratia* or without adequate reason. *State (ex rel. Jones) v. District Court*, 50 Mont. 1, 144 Pac. 564.

The law does not intend that a judgment shall follow so far behind the verdict as to be the cause of substantial damages. *Chesnut v. Sales*, 49 Mont. 318, 324, 52 L. R. A. (N. S.) 1199, 141 Pac. 986.

Under this section, there cannot be a stay in aid of a new trial; such a stay is properly granted only after notice of intention has been given, as provided in section 6798, ante, and notice of intention cannot be given, as shown by section 6796, ante, until judgment has been entered. *State (ex rel. Jones) v. District Court*, 50 Mont. 1, 144 Pac. 564.

A case tried by a jury may be reserved for argument, under this section, only when the judgment does not necessarily follow the verdict; as, for instance, in equity suits; or where, after discharge of the jury, the verdict is claimed to be unresponsive to the issues, or so ambiguous or informal that no judgment, proper under the issues, could be entered in conformity with it. *State (ex rel. Jones) v. District Court*, 50 Mont. 1, 144 Pac. 564.

Editorial Notes.

Entry on record. 28 L. R. A. 621.

§ 6803.

Power of jury, in claim and delivery, to award damages. *Chesnut v. Sales*, 49 Mont. 318, 323, 52 L. R. A. (N. S.) 1199, 141 Pac. 986.

Editorial Notes.

Right of successful party in replevin to recover as damages value of use of property while deprived of its possession. *Ann. Cas. 1914A*, 378.

Right to damages for detention of property pending appeal in replevin. 52 L. R. A. (N. S.) 1199.

Necessity that verdict in replevin give separate valuation of several articles involved. *Ann. Cas. 1912D*. 849.

Effect on verdict in replevin of failure to find unlawful taking or detention. 20 *Ann. Cas.* 430.

Requisites of special verdict in replevin. 24 L. R. A. (N. S.) 18.

§ 6806.

Bill of exceptions not necessary, when. See note post, § 6784.

This section has, since the adoption of section 6746, ante, become obsolete, so far as it includes the instructions as a part of the record for review, without a bill of exceptions, embodying the objections of the party to the action of the court thereon; and this applies, also, to instructions requested and refused. *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 246, 99 Pac. 837.

The record on appeal from an order of the district court, sustaining a motion to dismiss an action, on appeal to it from a justice's court, must be made up as provided in this section, or there can be no record on appeal in such a case; this section makes no distinction between records in cases originating in the district court and those in cases brought into that court by appeal. *Mettler v. Adamson*, 38 Mont. 198, 201, 99 Pac. 441.

A statement on motion for a new trial is not a part of the judgment-roll. *Harrington v. Butte etc. Min. Co.*, 35 Mont. 531, 90 Pac. 748.

An order sustaining a motion to strike out a portion of an answer, is deemed excepted to, and is a part of the judgment-roll. *Bordeaux v. Bordeaux*, 43 Mont. 102, 106, 115 Pac. 25.

In a divorce suit, where an insane husband was not personally served with summons, but a guardian ad litem was appointed, upon whom summons was

served, and he appeared for the defendant by filing a demurrer, the summons with the return thereon is no part of the judgment-roll; the decree is on its face valid; and there is nothing upon the face of the record to reveal any infirmity. *State v. District Court*, 38 Mont. 166, 170, 129 Am. St. Rep. 636, 35 L. R. A. (N. S.) 1098, 99 Pac. 291.

An order of the district court, sustaining a motion to dismiss an action, on appeal to it from a justice's court, is properly a part of the judgment-roll; it is deemed to have been excepted to. *Mettler v. Adamson*, 38 Mont. 198, 200, 99 Pac. 441.

§ 6807.

A secret interest is not subject to the lien of a docketed judgment. See note post, § 6821.

This section, by force of the federal statute, applies to the judgments of federal courts within the state. *Great Falls Nat. Bank v. McClure*, 176 Fed. 208, 211, 99 C. C. A. 562.

An execution sale transfers the legal title to the purchaser, leaving in the judgment debtor simply the right to redeem. *McQueeney v. Toomey*, 36 Mont. 282, 295, 122 Am. St. Rep. 358, 13 Ann. Cas. 316, 92 Pac. 561.

The presumption is that the clerk performed his official duty, as prescribed in this section. *Britannia Min. Co. v. United*

States F. & G. Co., 43 Mont. 93, 100, 115 Pac. 46.

A judgment becomes a lien upon the real property of the judgment debtor only when it is docketed. *McMillan v. Davenport*, 44 Mont. 23, 30, Ann. Cas. 1912D, 984, 118 Pac. 756.

The lien of an attachment is merged in that of the judgment recovered in the main action; and the judgment continues and may be enforced by execution and levy against any of the real property of the defendant, whether covered by the attachment or not, at any time within six years, but not afterward. *Great Falls Nat. Bank v. McClure*, 176 Fed. 208, 211, 99 C. C. A. 562.

Editorial Notes,

Interest in real property, undisclosed by record, as subject to lien of docketed judgment. Ann. Cas. 1912D, 988.

Estates and interests affected by lien. 93 Am. Dec. 345, 117 Am. St. Rep. 776.

§ 6811.

A judgment debtor whose property is about to be sold under execution, after the judgment has been otherwise satisfied, has an adequate remedy at law and, therefore, the sale will not be enjoined. *Donovan v. McDevitt*, 36 Mont. 61, 92 Pac. 49.

EXECUTION.

§ 6814.

Decree of foreclosure as authority for officer to sell. See note post, § 6861.

Errors in style of process, when immaterial. See note post, § 6861.

Money judgments and others, how enforced. See notes post, §§ 6817, 6861.

There is nothing in this section requiring a writ of execution to carry a decree of foreclosure into effect. *Thomas v. Thomas*, 44 Mont. 102, 110, Ann. Cas. 1913B, 616, 119 Pac. 283.

Before an officer is authorized to sell, under an ordinary judgment, he must have specific directions so to do; but, in a decree of foreclosure, the property to be subjected to the payment of the debt is already indicated by, and described in, the decree, coupled with a mandate that it be sold by the sheriff to satisfy the demands of the plaintiff. *Thomas v. Thomas*, 44 Mont. 102, 110, Ann. Cas. 1913B, 616, 119 Pac. 283.

§ 6817.

Execution not necessary to foreclosure sale. See note post, § 6861.

Requirements of execution. See note ante, § 6814.

This section does not apply to a foreclosure sale. *Thomas v. Thomas*, 44

Mont. 102, 111, Ann. Cas. 1913B, 616, 119 Pac. 283.

The word "process," employed in the Constitution, does not include the order of sale found in the decree of a court of equity in foreclosure proceedings. *Thomas v. Thomas*, 44 Mont. 102, 110, Ann. Cas. 1913B, 616, 119 Pac. 283.

The process, a writ of execution, is called an "order of sale." *Thomas v. Thomas*, 44 Mont. 102, 109 Ann. Cas. 1913B, 616, 119 Pac. 283.

If the property of a defendant, against whom an ordinary money judgment is entered, is subjected to the payment of the judgment by operation of law, the sheriff cannot proceed against any particular property without a warrant for so doing. *Thomas v. Thomas*, 44 Mont. 102, 111, Ann. Cas. 1913B, 616, 119 Pac. 283.

Editorial Notes.

Judicial or sheriff's sale of property in parcels or en masse. Ann. Cas. 1913B, 619.

§ 6821.

Attachment on execution. See note ante, § 6131.

This section, construed with section 6807, ante, leads to the conclusion that an

interest undisclosed by the record is not subject to the lien of a docketed judgment. *McMillan v. Davenport*, 44 Mont. 23, 32, Ann. Cas. 1912D, 984, 118 Pac. 756.

Where a wife obtains a decree for separate maintenance, but claims the existence of a fraudulent conspiracy to defeat her decree by a disposition of her husband's property, she has an adequate remedy by execution, and, therefore, is not entitled to sue in equity by way of a creditor's bill. *Raymond v. Blanegrass*, 36 Mont. 449, 464, 15 L. R. A. (N. S.) 976, 93 Pac. 648.

Query, whether a creditor seeking to reach assets of his debtor which have been fraudulently conveyed must allege and prove that he has secured a lien by causing attachment or execution to be levied. *Koopman v. Mansolf* (Mont.), 149 Pac. 491.

Editorial Notes.

Franchises, whether subject to execution. 15 Am. Dec. 595, 31 L. R. A. (N. S.) 639.

Interest of heir, legatee or devisee, when subject to execution. 44 Am. Dec. 338, 23 L. R. A. 642, 30 L. R. A. (N. S.) 115.

Cropper's interest, when not subject to execution. 51 Am. Dec. 410.

Crops or growths which are subject to as personalty. 55 Am. Dec. 161.

Money in officer's hands, whether subject to execution. 55 Am. Dec. 264.

Equities which are not subject to execution under statutes subjecting trust estates to. 97 Am. Dec. 304.

Execution against property in the hands of a receiver. 2 Am. St. Rep. 403; 71 Am. St. Rep. 370.

Interest on real property undisclosed by record as subject to lien of docketed judgment. Ann. Cas. 1912D, 988.

§ 6824.

A wife abandoned by her husband while residing on a homestead, who continues to occupy the homestead and farm it to maintain herself and infant children, making use of exempt property, may claim the exempt property for herself and children as against a judgment against the husband. *Mennell v. Wells* (Mont.), 149 Pac. 954.

§ 6825. Subdivision 7. Exemption of Earnings—Debts Incurred for Necessaries.

The earnings of the judgment debtor for his personal services rendered at any time within forty-five days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family, supported in whole or in part by his labor; but where debts are incurred by any such person or his wife or family for the common necessities of life, then the one-half of such earnings above mentioned are nevertheless subject to execution, garnishment and attachment, to satisfy debts so incurred. The words "his family" as used herein, are to be construed with the words "head of family" as used in section 4718 (1694) of the Civil Code. [Amendment approved March 3, 1913; Laws 1913, p. 81.]

A wife abandoned by her husband while residing on a homestead, who continues to occupy the homestead and farm it to maintain herself and infant children, making use of exempt property, may claim the exempt property for herself and children as against a judgment against the husband. *Mennell v. Wells* (Mont.), 149 Pac. 954.

Editorial Notes.

Tools, what exempted as and when. 21 Am. Dec. 545; 47 Am. Rep. 190; 123 Am. St. Rep. 139.

Head of family, who is and what constitutes a family. 61 Am. Dec. 586; 32 Am. Rep. 30.

Exemption of earnings and wages from execution and attachment. 91 Am. Dec. 411; 53 Am. Rep. 768;

102 Am. St. Rep. 81; 18 L. R. A. 586.

Exemption of personal property, constitutionality of statutes relating to. 45 Am. Dec. 251.

Exemption of pensions and their proceeds. 41 Am. Rep. 411; 2 Am. St. Rep. 596; 17 Ann. Cas. 1191.

Extraterritorial effect of exemption laws. 2 Am. St. Rep. 240; 19 Am. St. Rep. 145.

Laborers, who are within the meaning of laws granting exemptions. 58 Am. St. Rep. 303.

Proceeds of exempt property, whether subject to execution. 66 Am. St. Rep. 381; 19 L. R. A. 33.

Meaning of "apparatus" in exemption statute. Ann. Cas. 1912C, 610.

Right of debtor to exemption as affected by preparation to remove from state. Ann. Cas. 1913C, 729.

What may be exempt as homestead. 70 Am. Dec. 344.

Proceeds of homestead, whether and when exempt from execution. 45 Am. St. Rep. 237.

Homestead exemption as extending to premises used for hotel or lodging-house. Ann. Cas. 1913E, 1256.

Homestead exemption as extending to crops. Ann. Cas. 1912A, 120.

§ 6827.

Execution sale of mining machinery. See note post, § 6828.

Where a wife obtains a decree for separate maintenance, but claims the existence of a fraudulent conspiracy to defeat her decree by a disposition of her husband's property, she has an adequate remedy by execution, and, therefore, is not entitled to sue in equity by way of a creditor's bill. *Raymond v. Blancgrass*, 36 Mont. 449, 464, 15 L. R. A. (N. S.) 976, 93 Pac. 648.

The object of a levy is to bring property within the custody of the law, but where it, by the operation of a judgment lien, is already in the custody of the law, no levy is necessary; nothing more is required than to give the necessary notice and sell. *Britannia Min. Co. v. United States F. & G. Co.*, 43 Mont. 93, 100, 115 Pac. 46.

§ 6828.

Mining machinery as a fixture. See ante, § 4428.

Measure of damages for breach of agreement to purchase shares of corporate stock. See note ante, § 6081.

That which is affixed to land is realty. See ante, § 4425.

If a sheriff sells mining machinery under execution as personal property, upon five days' notice only, instead of as real property on notice of twenty days, he violates this section, and subjects himself and the surety company upon his official bond to the penalty prescribed in section 6829, post. *Britannia Min. Co. v. United States F. & G. Co.*, 43 Mont. 93, 99, 115 Pac. 46.

§ 6830a. Postponement of Execution Sale.

Good cause therefor appearing, the officer holding the execution may postpone any sale noticed thereunder, for a period not exceeding fifteen days, by public proclamation at the time and place fixed in the notice of sale, and by posting a notice in three public places in the township where the property has previously been noticed to be sold. [New section approved March 8, 1915; Laws 1915, p. 262.]

Editorial Notes.

Sale of more land than necessary under execution. 13 Am. Dec. 212.

Sale, failure of title, purchaser's remedy. 14 Am. Dec. 131.

Return day, sales under execution after. 15 Am. Dec. 522; 28 Am. St. Rep. 120.

Sale under execution, duty of sheriff to inform purchasers of encumbrances. 43 Am. Dec. 143.

Notice of sale, failure to give. 44 Am. Dec. 238.

Execution sales, remedies against purchaser at to recover amount of bid. 69 Am. Dec. 365.

Sale, release from bid, when purchaser may obtain. 70 Am. Dec. 572.

Sale, notice of, what is proper and sufficient. 75 Am. Dec. 704.

Sale, when passes plaintiff's interest in the property sold. 89 Am. Dec. 370.

Adjournment of execution sales. 26 Am. Dec. 536; 97 Am. St. Rep. 653.

Title acquired by plaintiff purchasing at execution sale. 79 Am. St. Rep. 947.

Who may not purchase at execution sale. 136 Am. St. Rep. 789.

Sale made under execution as judicial sale. Ann. Cas. 1913A, 1217.

Right of purchaser at execution sale to recover from judgment creditor where property purchased does not belong to judgment debtor. Ann. Cas. 1913B, 544.

Judicial or sheriff's sale of property in parcels or en masse. Ann. Cas. 1913B, 619.

How far purchaser protected as bona fide purchaser. 21 L. R. A. 33.

Relief from purchaser on annulling sale. 67 L. R. A. 33.

§ 6829.

Liability for penalty. See note ante, § 6828.

The penalty prescribed by this section is affixed to a wrongful sale, not a wrongful levy; and the officer and his surety are liable for a wrongful sale, though the levy was made in a former term of the officer, when he had other sureties. *Britannia Min. Co. v. United States F. & G. Co.*, 43 Mont. 93, 99, 115 Pac. 46.

§ 6835.

In the provision of this section that, when the purchaser of any "real" property, not capable of manual delivery, pays the purchase money, the officer must deliver to him a certificate of sale, the word "real" is used by mistake, and the word "personal" should be substituted therefor. *Raymond v. Blanegrass*, 36 Mont. 449, 465, 15 L. R. A. (N. S.) 976, 93 Pac. 648.

§ 6836.

An execution sale transfers the legal title to the purchaser, leaving in the judgment debtor simply the right to redeem. *McQueeney v. Toomey*, 36 Mont. 282, 295, 122 Am. St. Rep. 358, 13 Ann. Cas. 316, 92 Pac. 561.

§ 6837. Redemption of Real Property Sold.

Property sold subject to redemption, as provided by the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons or their successors in interest:

1. The judgment debtor or his successor in interest in the whole or any part of the property, and if the judgment debtor or successor be a corporation, then by a stockholder thereof.

2. A creditor having a lien by judgment, mortgage or attachment on the property sold or on some share or part thereof, subsequent to that on which the property is sold. If a corporation be such creditor then any stockholder thereof may redeem. The persons mentioned in the second division of this section are in this chapter termed "Redemptioners." [Amendment approved March 15, 1913; Laws 1913, p. 447.]

Where real estate is bid in by the judgment creditor for less than the amount of the judgment, the judgment debtor may transfer the interest remaining in him, during the period of redemption, to a third person, who, upon redemption within the statutory time, acquires the legal title, free from the lien of a deficiency judg-

ment theretofore rendered. *McQueeney v. Toomey*, 36 Mont. 282, 293, 122 Am. St. Rep. 358, 13 Ann. Cas. 316, 92 Pac. 561.

Editorial Notes.

Right to redeem from judicial sale after expiration of statutory period. Ann. Cas. 1913E, 1187.

§ 6839. When Judgment Debtor or Redemptioner may Redeem—Corporation and Stockholders.

If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption with interest thereon at the rate of one per cent per month in addition and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and in addition the amount of any liens held by the said last redemptioner prior to his own with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within sixty days after the last redemption, on paying the sum paid on the last previous redemption with interest thereon at the rate of one per cent per month and the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest. Written notice of redemption must be given to the sheriff, and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner, or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the

county clerk, and if such notice be not filed the property may be redeemed without paying such tax, assessments or lien, if not redemption be made within one year after the sale, the purchaser or his assignee, is entitled to a conveyance, or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by a debtor, the person to whom the payment was made must execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments or conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale.

If a stockholder of a corporation redeems, the corporation, within one year after the date of sale, may redeem by paying to the redemptioner, or the sheriff for his benefit, the amount paid to effect the redemption with interest thereon at the rate of one per cent per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner with like interest thereon. When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption, and within sixty days after the expiration of one year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for his benefit, a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate of one per cent per month, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon, and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed, and shall succeed to the said property as tenants in common in such proportions respectively as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit, setting forth the number of shares of stock owned by him, and to the best of his knowledge, the number of shares of stock of the corporation outstanding.

(Section 3.) All acts and parts of acts inconsistent with this act are hereby repealed. [Amendment approved March 15, 1913; Laws 1913, p. 447.]

If the debtor redeems, the effect of this section is to terminate the sale and restore the estate to him, whereupon any deficiency judgment would attach as a

lien. *McQueeney v. Toomey*, 36 Mont. 282, 296, 122 Am. St. Rep. 358, 13 Ann. Cas. 316, 92 Pac. 561.

Editorial Notes.

Right to redeem from judicial sale after expiration of statutory period. Ann. Cas. 1913E, 1187.

Time to redeem from judicial sale as running from date of sale or date of confirmation thereof. Ann. Cas. 1913B, 41.

§ 6847. Validating Prior Judicial Sales.

All judicial sales of real property which, previous to January 1, 1914, (provided no action is now pending to set such sale aside), were made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale shall be valid and sufficient in law to sustain a sheriff's deed based on such sale, and when no such deed has been executed, shall entitle such purchaser to such deed; and such deed if now or when executed shall be sufficient to convey all the title of judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, or the manner of making or conducting the sale, or in the recitals or references in such deed, shall be disregarded and such sale shall not be invalidated by reason of any such defect or irregularity. [Amendment approved February 2, 1915; Laws 1915, p. 10.]

MORTGAGE FORECLOSURE.**§ 6861.**

Authority to proceed under ordinary judgment, or decree of foreclosure. See note ante, § 6814.

Execution is necessary to sale, when. See ante, § 6817.

The obvious purpose of this section is to compel one who has taken a special lien to secure his debt to exhaust his security before having recourse to the general assets of the debtor. State Sav. Bank v. Albertson, 39 Mont. 414, 422, 102 Pac. 692.

This section is a limitation upon the rights which usually pertain to property, and its restriction will not be construed to include personal or collateral security, or any other form of security not falling within the meaning of the term "mortgage." State Sav. Bank v. Albertson, 39 Mont. 414, 423, 102 Pac. 692.

A court of equity has inherent power to order a sale of mortgaged property, without issuing a formal writ of execution. Thomas v. Thomas, 44 Mont. 102, 111, Ann. Cas. 1913B, 616, 119 Pac. 283.

An officer's authority to sell land on foreclosure arises from the decree of sale, and not from any so-called "order of sale"; if an "order of sale," containing a copy of the decree, is issued to the sheriff, any errors in such order, either as to the style of process, or otherwise, are immaterial and should be disregarded. Thomas v. Thomas, 44 Mont. 102, 111, Ann. Cas. 1913B, 616, 119 Pac. 283.

A decree of foreclosure operates directly upon the mortgaged property, and is itself sufficient authority for the officer to proceed; it is unnecessary that any order aside from the decree should issue. Thomas v. Thomas, 44 Mont. 102, 111, Ann. Cas. 1913B, 616, 119 Pac. 283.

Where a contract is made for the sale and purchase of real and personal property, and which provides that time shall be of its essence; that the vendor may, at his option, terminate it, for failure on the part of the vendee to comply strictly with its terms; that, upon such termination, the property involved and all payments made by the vendee shall be the property of the vendor; and that the vendee shall not have any action to recover; the transaction, though the purchaser has been given possession, and has executed notes for deferred payments, is not a mortgage, and the vendor's remedy for the purchaser's default is a suit to cancel the contract. Arnold v. Fraser, 43 Mont. 540, 547, 117 Pac. 1064.

If suit is brought on a note, the defendant's answer that the plaintiff has taken "security" for the payment of the note, does not bar the action and give a right of dismissal, where it does not appear from the answer that the security is in the form of a mortgage or the equivalent of a mortgage; the fact that the obligation sued upon is secured by a mortgage or its equivalent is a matter of defense, and the burden rests upon the defendant to make that appear by his pleading. State Sav. Bank v. Albertson, 39 Mont. 414, 423, 102 Pac. 692.

Editorial Notes.

Judicial and sheriff's sale of property in parcels or en masse. Ann. Cas. 1913B, 619.

Foreclosure of subsequent mortgage, effect of upon prior. 80 Am. Dec. 714.

Right to successive foreclosures of mortgage payable in installments. Ann. Cas. 1912C, 846.

Proceedings to enforce mortgage for part of debt. 37 L. R. A. 737.

Mortgagor who has conveyed interest in premises as necessary or proper party to foreclosure. *Ann. Cas.* 1913A, 83.

Necessity of making junior encumbrancer a party to a suit for foreclosure of a senior mortgage. 36 *L. R. A. (N. S.)* 426.

NUISANCES

§ 6865.

Injunction, when granted. See ante, § 6643.

Where a city gives a lease to land owned by it, but reserves the use thereof for the burial of dead animals, and for the dumping of garbage, and contracts with the lessee to superintend the proper disposition of garbage and the burying of dead animals, but the lessee fails to do so, and the city, having no other place to make proper disposition of its garbage and dead animals, brings an action for unlawful detainer, it is entitled to a temporary injunction, pendente lite, restraining the lessee from interfering with the city's use of the property, as the result of the lessee's course is the maintenance of a public nuisance. *City of Bozeman v. Bohart*, 42 *Mont.* 290, 301, 112 *Pac.* 388.

Editorial Notes.

Liabilities of erectors and continuers of nuisances. 14 *Am. Dec.* 336.

Public nuisances, private action for. 31 *Am. Dec.* 132; 25 *Am. Rep.* 533; 52 *Am. Rep.* 574; 1 *Ann. Cas.* 38; 17 *Ann. Cas.* 1128.

Public nuisances, injunction against, who may obtain. 67 *Am. Dec.* 203.
Injunction against threatened nui-

sances. 73 *Am. Dec.* 113; 2 *Ann. Cas.* 250; 20 *Ann. Cas.* 933.

Private nuisances, what will be enjoined as interfering with the comfortable enjoyment of real property. 10 *Am. Rep.* 674.

Percolating of filthy water. 39 *Am. Rep.* 16.

Offensive trades and manufactures as. 42 *Am. Rep.* 540.

Abatement of private nuisances, when justifiable. 43 *Am. Rep.* 24.

Businesses and machinery which may be enjoined as nuisances. 51 *Am. Rep.* 467.

Debris in streams, when constitute nuisances. 30 *Am. St. Rep.* 551.

Prescriptive right to maintain nuisances. 30 *Am. St. Rep.* 556; 17 *Ann. Cas.* 789.

Public nuisances, what are. 107 *Am. St. Rep.* 195.

Burning of soft coal as nuisance. *Ann. Cas.* 1912B, 1036; 13 *L. R. A. (N. S.)* 465.

Right of private citizen to maintain action to abate nuisance caused by obstruction of navigable stream. *Ann. Cas.* 1913E, 51.

Gas plant as nuisance. 20 *L. R. A. (N. S.)* 466.

QUIETING TITLE.

§ 6870. Parties to Action Quiet Title—Venue.

An action may be brought and prosecuted to final decree, judgment or order, by any person or persons, whether in actual possession or not, claiming title or real estate, against any person or persons, both known and unknown, who claim or may claim any right, title, estate or interest therein, or lien or encumbrance thereon, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, for the purpose of determining such claim or possible claim, and quieting the title to said real estate. All actions brought under this section must be brought in the county in which the real estate, or a portion thereof, as to which the title is sought to be quieted, is situated. [Amendment approved March 8, 1915; *Laws* 1915, p. 250.]

Immateriality of possession. See note post, § 6882.

This section confers powers upon courts of equity to entertain actions in which the defendant is asserting an adverse claim while the plaintiff is in possession, and actions in which neither the plaintiff nor the defendant is in possession, and the latter is asserting the adverse claim. *O'Hanlon v. Ruby Gulch Min. Co.*, 48 *Mont.* 65, 82, 135 *Pac.* 913.

Courts of equity have jurisdiction of an action to determine adverse claims to real property and may give complete relief. *Cottonwood Ditch Co. v. Thom*, 39 *Mont.* 115, 119, 101 *Pac.* 825.

An action to quiet title to premises sold for delinquent taxes is one in equity. *Larson v. Peppard*, 38 *Mont.* 128, 132, 129 *Am. St. Rep.* 630, 16 *Ann. Cas.* 800, 99 *Pac.* 136.

Where the trial of a cause proceeded as one to quiet title to a mining claim, under this section, without objection on the part of the defendant, he will not be heard on appeal to insist that the case should have been tried as an adverse suit, under section 6882, post, in pursuance of the provisions of the federal statute. *O'Hanlon v. Ruby Gulch Min. Co.*, 48 Mont. 65, 82, 135 Pac. 913.

The plaintiff out of possession must, as against the defendant in possession asserting an adverse claim, resort to an action in ejectment; in such a case, he has an adequate remedy at law, and cannot resort to a suit in equity to quiet title, under this section. *O'Hanlon v. Ruby Gulch Min. Co.*, 48 Mont. 65, 82, 135 Pac. 913.

If an action can be considered as one to quiet title, the complaint does not state a cause of action, where it fails to allege that the defendant asserts a claim to any portion of the premises in controversy.

Northern Pac. Ry. Co. v. Hanswirth, 49 Mont. 135, 140, 140 Pac. 516.

Editorial Notes.

Clouds on title, bills to remove. 67 Am. Dec. 110.

Cloud on title, what is and who may maintain suit to remove. 45 Am. St. Rep. 373.

Effect of remedy at law. 12 L. R. A. (N. S.) 50.

Necessity that plaintiff in action to quiet title allege title or possession at time of commencement of action. Ann. Cas. 1913D, 386.

Right of purchaser at judicial or execution sale to bring suit to quiet title. Ann. Cas. 1914B, 380; 15 L. R. A. 784.

Right of holder of equitable title to land to maintain action to quiet title against holder of legal title. Ann. Cas. 1913B, 89.

§ 6870a. Parties Defendant—Unknown Claimants.

In any action brought under section 6870a the plaintiff may join as defendants any or all persons, known or unknown, claiming, or who might claim, any right, title, estate or interest in, or lien or encumbrance upon the real property described in the complaint, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim or dower, inchoate or accrued, and including the person or persons in possession if the plaintiff is not in possession. If the plaintiff shall desire to obtain a complete adjudication of the title to the real estate described in the complaint, he may name as defendants all known persons who assert or who might assert any claim as in this section above specified, and may join as defendants all persons unknown who might make any such claim, by adding in the caption of the complaint in such action the words, "and all other persons, unknown, claiming or who might claim any right, title, estate or interest in, or lien or encumbrance upon the real property described in the complaint, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued. [New section approved March 8, 1915; Laws 1915, p. 251.]

§ 6870b. Notice of Pendency of Action.

Before any order for the publication of summons is granted as herein-after provided, the plaintiff shall file, in the office of the clerk and recorder of each county in which any of the property involved in such action is situated, a notice of the pendency of such action, signed by the plaintiff or his attorney, which notice shall contain the title of the court in which such action is filed, the full caption of the cause, a complete description of all the property involved in such action, and a statement of the relief sought by plaintiff. [New section approved March 8, 1915; Laws 1915, p. 251.]

§ 6870c. Service of Summons by Publication.

When any defendant specifically named in such complaint resides out of the state, or has departed from the state, or cannot after due diligence

be found within the state, or conceals himself to avoid the service of summons, or when any defendant is a foreign corporation, having no agent for the service of process, nor managing or business agent, cashier, secretary, or other officer within the state or when any defendant is a domestic corporation and none of the officers or agents of such corporation, upon whom valid service of said corporation can be made, can, after due diligence be found within the state, the plaintiff, upon the return of the summons showing due personal service within the state upon all defendants specifically named in the complaint, other than such as come within the meaning of the foregoing provisions of this section, and upon filing with the clerk of said court an affidavit setting forth the facts with reference to any of such defendants upon whom personal service of summons within the state cannot be made, within the meaning of the foregoing provisions of this section, may obtain an order for the service of summons upon such defendants last mentioned, to be made by publication. [New section approved March 8, 1915; Laws 1915, p. 251.]

§ 6870d. Order for Publication of Summons—Affidavit.

The plaintiff may obtain an order for the service of summons upon all unknown claimants or possible claimants by publication, upon filing with the clerk of the court an affidavit showing that he has made diligent search and inquiry for all persons who claim, or might claim, any right, title, estate or interest in, or lien, or encumbrance upon such real property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and has specifically named as defendants in such action all such persons whose names can be ascertained. One affidavit and order for service by publication may be made to include all defendants, known and unknown, upon whom such service is sought, and in such event but one summons shall be published, and the same shall be directed to all defendants upon whom such summons shall be served by publication; but no order for service by publication shall be made until proof of the filing of the notice of the pendency of such action in accordance with the provisions of section 6870b has been made to the court. [New section approved March 8, 1915; Laws 1915, p. 252.]

§ 6870e. Showing Necessary to be Made Before Order of Publication.

The affidavit provided for in sections 6870c and 6870d shall be sufficient if the necessary facts are therein alleged substantially in the language employed in said sections; but before any order of publication is granted the plaintiff shall produce testimony, oral or by deposition, as in contested cases, showing clearly that the necessary facts exist, and that he has used due diligence in all respects as to which due diligence is required in such case by the preceding sections, and the testimony of each witness examined orally upon the hearing shall be reduced to writing and be subscribed and sworn to by such witness, and all such testimony, together with all depositions used upon such hearing, shall be filed in said action. [New section approved March 8, 1915; Laws 1915, p. 252.]

§ 6870f. Form of Summons.

The summons to be published under the preceding sections shall be in substantially the following form:

"(Title of Court and Cause.)"

"To [naming known defendants upon whom service by publication is sought], and to all other persons, unknown, claiming, or who might claim, any right, title, estate, or interest in, or lien or encumbrance upon the real property described in the complaint, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, Greeting:

"You are hereby summoned to answer the complaint in this action which is filed in the office of the clerk of this court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

"This action involves the title to the following described lands, to wit: [Here insert description of land.]

"The nature of the relief sought by the plaintiff is as follows: [Here set forth in concise form character of relief sought.]

"Witness my hand and the seal of said court, this day of

.....

"Clerk of the Above-entitled Court."

Such summons shall be published at least once in each week for a period of six weeks in some newspaper, of general circulation, printed and regularly published at least once a week in the county in which the action is brought, or if there is no such newspaper printed in such county, then such summons shall be published in like manner, for a like period, in the nearest county in which such a newspaper is printed, preference to be given, first, to an adjoining county in which any portion of the property is situated, if situated in more than one county; and second, to any adjoining county. Service shall be deemed complete on the forty-second day after the day of first publication. [New section approved March 8, 1915; Laws 1915, p. 252.]

§ 6870g. Code Sections Applicable.

The provisions of section 6513 to 6527, inclusive, so far as the same are not in conflict with these sections, are hereby made applicable to the action herein provided for. [New section approved March 8, 1915; Laws 1915, p. 253.]

§ 6870h. Jurisdiction of Court—Judgment.

Upon the service of summons on all the defendants, known and unknown, in the manner provided in the preceding sections, the court, in which such action is tried, shall have jurisdiction to make a complete adjudication of the title to the lands named in the complaint and the title to which is sought to be quieted, including jurisdiction to direct the cancellation of instruments constituting clouds upon such title, the execution of conveyances, where it appears that any party to such action should execute such conveyance or conveyances, the execution of satisfactions of mortgages and other apparent liens upon such land, or any part thereof, or the doing of any other act of a personal nature necessary to give effect to the rights of the respective parties to such action as the same may be adjudicated by

the court. When any judgment or decree shall be rendered in such action, for a conveyance, release or acquittance, as above mentioned, and the party or parties against whom the judgment or decree shall be rendered do not comply therewith, within the time specified in said judgment or decree for such compliance, such judgment or decree shall have the same operation and effect, and be as available, as if the conveyance, release, or acquittance had been executed conformably to such judgment or decree. Before plaintiff shall be entitled to a decree in such action against any defendant who shall not appear therein, he must produce evidence sufficient to prima facie entitle him to relief, and relief shall be granted only to the extent to which such evidence shall prima facie prove him to be entitled to the same; but this provision shall not affect the procedure in or manner of trial of such actions as between the plaintiff and any defendant who shall appear in such action; and the oral testimony of each witness testifying in support of the complaint in such action, as against such defendant who shall not appear therein shall be reduced to writing, subscribed and sworn to by such witness, and the same, together with all depositions and documentary evidence produced in support of such complaint, shall be filed in such action. [New section approved March 8, 1915; Laws 1915, p. 253.]

§ 6870i. Persons Bound by Judgment.

Every person made a defendant to such action, by name, and every unknown claimant or possible claimant, upon whom service has been made by publication, in accordance with the preceding sections, and who has not appeared in such action, shall be bound by the judgment or decree entered in such action, subject to the right of any such defendants to apply for relief in any manner provided by the statutes applicable to the case of a defaulting defendant served only by publication. [New section approved March 8, 1915; Laws 1915, p. 254.]

Editorial Notes.

Right of purchaser at judicial or execution sale to bring suit to quiet title. Ann. Cas. 1912B, 380; 15 L. R. A. 784.

Right of holder of equitable title to land to maintain action to quiet title against holder of legal title. Ann. Cas. 1913B, 89.

Cloud on title, what is and who may maintain suit to remove. 45 Am. St. Rep. 373.

ante, and adverse claims to determine the right of the contestant to a patent. Thornton v. Kaufman, 35 Mont. 182, 88 Pac. 796.

This section applies especially to adverse claims in patent proceedings, and seems to contemplate a special action, equitable in its nature; but the section has not changed the rule of pleading referred to in Hopkins v. Butte Copper Co., 29 Mont. 390, 74 Pac. 1081; and the fact of the filing of the claim in the land office within the prescribed time and the bringing of the action within the prescribed limitation must be alleged, or the complaint will not support the judgment. Thornton v. Kaufman, 35 Mont. 182, 88 Pac. 796.

Editorial Notes.

Adverse. 50 L. R. A. 212.

§ 6882.

Possession in suits to quiet title. See note ante, § 6870.

By the adoption of this section, the legislature recognized the distinction between ordinary actions to determine adverse claims, authorized by section 1310,

§ 6882a. Action to Establish Title to Property Granted to Heirs of Entryman.

(Section 1.) Whenever the government of the United States has heretofore, or shall hereafter grant lands in the state of Montana to the heirs of a deceased entryman, any person who claims an estate of inheritance or interest in such lands may bring and maintain an action in rem against all

the world, in the district court for the county in which such real property is situated to establish his title to such property and to determine all adverse claims thereto. Any number of separate parcels of land claimed by the plaintiff may be included in the same action. [New section approved February 18, 1915; Laws 1915, c. 15, p. 22.]

§ 6882b. Complaint in Such Action—Parties Defendant.

(Section 2.) The action shall be commenced by the filing of a verified complaint, in which the parties so commencing the same shall be named as plaintiff, and the defendants shall be described as "All persons claiming any interest in or lien upon the real property herein described, or any part thereof," and shall contain a statement of the facts enumerated in section 1 of this act; a particular description of such real property, and shall specify the estate, title or interest of the plaintiff therein. [New section approved February 18, 1915; Laws 1915, c. 15, p. 22.]

§ 6882c. Affidavits to be Filed by Plaintiff.

(Section 3.) At the time of filing the complaint, the plaintiff shall file with the same, his affidavit fully and explicitly setting forth and showing:

1st. The character of his estate, right, title, interest or claim in the property.

2d. Whether or not he has ever made any conveyance of his interest in said property or any part thereof, and if so, when, and to whom. Also statement of any and all existing mortgages, deeds of trust, judgments or other liens thereon. [New section approved February 18, 1915; Laws 1915, c. 15, p. 22.]

3d. When and where the deceased entryman of said property died, and what kin or relationship the claimant bore to the said entryman at the time of his death, and the names and residences of any other person who is next of kin or entitled to succeed to any portion of the lands, the subject of said action, and the names of, and residences of all persons who have liens upon the property, or any part thereof adversely to the plaintiff if he knows, or has been informed, or has been able to discover any such person. If the plaintiff is unable to state any one or more of the matters herein required, he shall set forth and show fully and explicitly the reasons for such inability. Such affidavit shall constitute a part of the judgment-roll. If the plaintiff be a person under guardianship, the affidavit shall be made by his guardian.

§ 6882d. Summons—Issuance and Form.

(Section 4.) Upon the filing of the complaint and affidavit, a summons must be issued under the seal of the court which shall contain the name of the court and county in which the action is brought, the name of the plaintiff and the particular description of the real property involved, and shall be directed to "All persons claiming any interest in or lien upon the real property herein described, or any part thereof," as defendants, and shall be substantially in the following form:

In the District Court of the Judicial District of the State of Montana, in and for the County of Plaintiff vs. All persons claiming any interest in, or lien upon, the real property herein described or any part thereof, Defendants.

The state of Montana to all persons claiming any interest in or lien upon the real property herein described, or any part thereof, defendants, Greeting:

You are hereby required to appear and answer the complaint of . . . , plaintiff, filed with the clerk of the above-entitled court, within sixty days after the first publication of this summons, and set forth what interest or lien, if any, you have in or upon that certain real property, or any part thereof, situated in the county of . . . , state of Montana, particularly described as follows: (Here insert description.)

And you are hereby notified that, unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint, to wit: (Here insert a statement of the relief so demanded.)

Witness my hand and the seal of said court this . . . day of . . . A. D. 191...

..... Clerk.

[New section approved February 18, 1915; Laws 1915, c. 15, p. 23.]

§ 6882e. Publication of Summons—Posting.

(Section 5.) The summons shall be published in a newspaper of general circulation, published in the county in which the action is brought. The newspaper in which such publication is to be made, shall be designated by an order of the court or judge thereof, to be signed and filed with the clerk. No other order for the publication of the summons shall be necessary, nor shall any affidavit therefor be required, nor need any copy of the complaint be served, except as hereinafter required. The summons shall be published at least once a week for a period of five weeks, and to each publication thereof shall be appended a memorandum, signed by the plaintiff's attorney, in substance as follows: "The following persons are said to claim an interest in, or lien upon said property, adverse to plaintiff." (Give names and addresses as above provided.) A copy of the summons, together with a copy of the foregoing memoranda, shall be posted in a conspicuous place on each separate parcel of the property described in the complaint within ten days after the first publication of the summons. [New section approved February 18, 1915; Laws 1915, c. 15, p. 24.]

§ 6882f. Personal Service of Summons—Service by Mail on Nonresidents.

(Section 6.) If the said affidavit discloses the name of any person next of kin or relationship to the deceased entryman, or entitled to succeed to any part of said property, or the name of a person who claims, or may claim an interest by mortgage, trust deed, judgment or other lien, the said summons shall also be personally served upon such person if he can be found within the state, together with a copy of the complaint and a copy of said affidavit, during the period of the publication of the summons and to the copy of the summons delivered to any such person, there shall be appended a copy of the memoranda provided for in section 5 hereof. If such person resides out of the state, a copy of the summons, memoranda, complaint and affidavit shall be, within ten days after the first publication of the summons, deposited in the United States postoffice, inclosed in a sealed envelope, postage prepaid, addressed to such person at the address given in the affidavit, or if no address be given therein, then at the county seat of the county in which the action was brought. If such person resides within the state, and could not, with due diligence be found within the

state within the period of the publication of the summons, then said notice aforesaid shall be mailed to him as above provided forthwith upon the expiration of said period of said publication. [New section approved February 18, 1915; Laws 1915, c. 15, p. 24.]

§ 6882g. Jurisdiction of Court.

(Section 7.) Upon the completion of the publication and posting of the summons and its service upon, and mailing to the persons, if any, upon whom it is hereby directed to be so specially served, the court shall have full and complete jurisdiction over the plaintiff and the said property, and of the person of everyone having or claiming any estate, right, title or interest in or to, or lien upon such property or any part thereof, and shall be deemed to have obtained the possession and control of said property for the purposes of the action, and shall have full and complete jurisdiction to render the judgment therein, which is provided for in this act. [New section approved February 18, 1915; Laws 1915, c. 15, p. 25.]

§ 6882h. Time for Appearance by Defendant—Answer.

(Section 8.) At any time within the first sixty days from the first publication of the summons, or within such further time not exceeding thirty days, as the court may for good cause, grant any person having or claiming any estate, right, title or interest, in or to, or lien upon said property or any part thereof, may appear and make himself a party to the action by pleading to the complaint. All answers must be verified and set forth specifically the kin or relationship of the deceased entryman, and the estate, right, title, interest, or lien so claimed. [New section approved February 18, 1915; Laws 1915, c. 15, p. 25.]

§ 6882i. Lis Pendens.

(Section 9.) The plaintiff must, at the time of filing the complaint, and every defendant to claim, or claiming any affirmative relief, must at the time of filing his answer, record in the office of the county clerk and recorder of the county in which the property is situated, a notice of the pendency of the action, containing the object of the action, or the defense and a particular description of the property [affected] effected thereby; and the recorder shall record the same in a book of the miscellaneous records of his office, and make a reference as to the date and time of the filing of such notice, and when recorded, to the book and page record thereof. [New section approved February 18, 1915; Laws 1915, c. 15, p. 25.]

§ 6882j. Default Judgment—Inquiry for and Bringing in Parties.

(Section 10.) No judgment in any such action shall be given by default, but the court must require proof of the facts alleged in the complaint and other pleadings, and the court must further make diligent inquiry of the plaintiff and all defendants appearing concerning the next kin of said deceased entryman, and upon such examination should any heir be discovered who has not been served, or who has not appeared, the court may order such heir brought in if necessary for the determination herein provided for. [New section approved February 18, 1915; Laws 1915, c. 15, p. 25.]

§ 6882k. Judgment—Conclusiveness—Recording Copy.

(Section 11.) The judgment shall ascertain and determine the heirship of said deceased entryman and all estates, rights, titles, interests and

claims in and to said property and every part thereof, whether the same be legal or equitable, present or future, vested or contingent, or whether the same consists of mortgages or liens of any description and shall be binding and conclusive upon every person who at the time of the commencement of the action, had or claimed to have any estate, right, title or interest in or to said property or any part thereof, and upon every person claiming under him by title subsequent to the commencement of the action. A certified copy of the judgment in such action shall be recorded in the office of the recorder of the county in which said action was commenced, and any party or the successor in interest of any party to said action, may at his option file for record in the office of the recorder of such county, the entire judgment-roll in said action. [New section approved February 18, 1915; Laws 1915, c. 15, p. 26.]

§ 6882l. Rules of Evidence—Depositions.

(Section 12.) Except as herein otherwise provided, all the provisions and rulings of law relating to evidence, pleading, practice, new trials, and appeals, applicable to other civil actions shall apply to the actions hereby authorized.

At any time after the issuance of the summons, any party to the action may take depositions therein in conformity to law, upon notice to the adverse party sought to be bound by such depositions and who have appeared in the action, if any, and upon notice filed with the clerk. The depositions may be used by any party against any other party giving or receiving the notice (except the clerk) subject to all just exceptions. [New section approved February 18, 1915; Laws 1915, c. 15, p. 26.]

§ 6882m. Subsequent Action—Time for Bringing.

(Section 13.) Whenever judgment in an action hereby authorized shall have been entered, as to any real property, no other action relative to the same property or any part thereof maintained under this act shall be tried until proof shall first have been made to the court that all persons who appeared in the first action, or their successors in interest have been personally served with the papers mentioned in section 6 of this act, either within or without this state, more than one month before the time to plead expired. [New section approved February 18, 1915; Laws 1915, c. 15, p. 26.]

§ 6882n. Action by Executors, Administrators or Guardians.

(Section 14.) An executor, administrator or guardian, or other person claiming an interest by deed of conveyance or otherwise, may maintain as plaintiff, and may appear and defend in the action herein provided for. [New section approved February 18, 1915, Laws 1915, c. 15, p. 26.]

§ 6882o. Cumulative Remedies.

The remedies provided for by this act shall be deemed cumulative, and in addition to any other remedy for, or hereafter provided by law for quieting or establishing title to real property. [New section approved February 18, 1915; Laws 1915, c. 15, p. 26.]

§ 6882p. Repeal of Conflicting Acts.

(Section 15.) All acts and parts of acts in conflict with this act are hereby repealed. [New section approved February 18, 1915; Laws 1915, c. 15, p. 27.]

QUO WARRANTO.

§ 6944.

Attacking corporate existence. See note ante, § 3905.

Failure to organize, effect of. See note ante, § 3892.

Editorial Notes.

Proper parties defendant in quo warranto proceedings against corporation. Ann. Cas. 1913A, 570.

§ 6959.

The right of action given by this section cannot refer to one for salary. *Wynne v. City of Butte*, 45 Mont. 417, 423, 123 Pac. 531.

§ 6987.

Disqualifying a judge for imputed bias. See note ante, § 6315.

JUSTICE'S COURT PRACTICE.

§ 6993.

The justice cannot issue an attachment, or proceed to judgment, without the filing of a formal complaint; or its equivalent. *Shandy v. McDonald*, 38 Mont. 393, 399, 100 Pac. 203.

§ 6995.

If a defendant joins with his codefendant, in a motion to dismiss an action against them, he waives service of summons and appears for all purposes. *State v. Smith*, 42 Mont. 492, 494, 113 Pac. 294.

§ 7004.

Postponement. See note post, §§ 7034 and 7047.

§ 7005.

Sufficiency of complaint. See note post, § 7007.

§ 7006.

A reply is not one of the pleadings which may be filed in a justice's court. *Mettler v. Adamson*, 38 Mont. 198, 200, 99 Pac. 441.

§ 7007.

The term "account," in this section, is not used in the same sense as it is in section 6569, ante. *Moran v. Ebey*, 39 Mont. 517, 519, 104 Pac. 522.

"A copy of the account" does not mean a list of the items constituting it; such list may be obtained under section 7016, post; the complaint is sufficient where it shows the balance due on account. *Moran v. Ebey*, 39 Mont. 517, 519, 104 Pac. 522.

There is no reason for requiring the plaintiff to furnish the items of the account in his complaint, so long as the de-

fendant may obtain them under the provisions of section 7016, post. *Moran v. Ebey*, 39 Mont. 517, 519, 104 Pac. 522.

§ 7008.

Jurisdiction of justice. See note ante, § 6286.

In a justice's court, all causes of action which a plaintiff has against his adversary may be joined in one complaint, if they are of such a character that the justice has jurisdiction of each of them, and the aggregate of the demands does not exceed three hundred dollars. *Reynolds v. Smith*, 48 Mont. 149, 151, 135 Pac. 1190.

§ 7009.

Where the defendant, in an action in a justice's court, fails to set up a subsisting counterclaim upon which an action might have been brought in that court, he cannot, under this and the following section, thereafter, on appeal to the district court, have it adjudicated. *Walter v. Cox*, 36 Mont. 20, 24, 91 Pac. 1063.

§ 7010.

This and the preceding section demonstrate that it was the purpose of the legislature in enacting them, that all petty claims existing between the parties and falling within the limited jurisdiction of justice's courts should be adjudicated in one action. *Walter v. Cox*, 36 Mont. 20, 24, 91 Pac. 1063.

§ 7016.

"Copy of the account," what is sufficient as. See note ante, § 7007.

§ 7027. Attachments in Justices' Courts—Undertaking.

Before issuing the writ the justice must require a written undertaking in due form on the part of the plaintiff with two or more sureties, in a sum of not less than fifty dollars (\$50), nor more than three hundred dollars (\$300), to the effect that if defendant recover judgment the plaintiff will pay all costs that may be awarded to defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking. Within two days after, or at any time before the service of the writ of attachment upon defendant, he may except to the sufficiency of the sureties, and if he fails to do so, he is deemed to have

waived all objections to them. When excepted to, the sureties must within three days after notice by the defendant of not less than one day, justify before the justice, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the justice shall make an order vacating the writ of attachment. [Amendment approved March 4, 1911; Laws 1911, p. 155.]

§ 7034.

This section refers specifically to a postponement of the trial; that is, the trial on the merits, after issue has been reached and a definite time has been fixed for it as provided in section 7004, ante; but the justice, of necessity, has the power to postpone a case when he is hearing another one at the time set for hearing. *State v. Smith*, 42 Mont. 492, 495, 113 Pac. 294.

It seems that a justice of the peace may take a case under advisement if the parties consent, rather than enter judgment at the close of the trial. *State v. Houston*, 36 Mont. 178, 181, 12 Ann. Cas. 1027, 92 Pac. 476.

§ 7036.

The continuance of a case, by a justice of the peace, upon the application of the plaintiff, and without any showing, such as is required by this section, is unauthorized; and the effect of such action, coupled with his refusal to dispose of the case on the day first set for trial, at which time the defendant is present, is to lose jurisdiction; and, if he afterward renders judgment on the day last set for trial, when the plaintiff is present but the defendant is absent, the judgment will be annulled on certiorari. *State v. Williams*, 50 Mont. 582, 148 Pac. 333.

§ 7047.

The postponement of a case necessarily postpones the beginning of the hour during which the defendant must await the appearance of the plaintiff before he can demand a dismissal of the action. *State v. Smith*, 42 Mont. 492, 495, 113 Pac. 294.

§ 7049.

Where a justice takes a case under advisement, without the consent of the parties, appointing neither time nor place for the rendition of judgment, he loses jurisdiction, and a judgment rendered a month thereafter, without notice to the parties, is void. *State v. Houston*, 36 Mont. 178, 180, 12 Ann. Cas. 1027, 92 Pac. 476.

Editorial Notes.

Justices of the peace, docketing of judgment by. 40 Am. Dec. 386.

Which controls as between oral announcement of decision by justice of peace and judgment actually entered of record. Ann. Cas. 1912A, 1283.

Entry or record of judgments of justices of peace. 28 L. R. A. 638.

§ 7052.

Power to remit excess to bring case within jurisdiction of justice of the peace. See note ante, § 6286.

Editorial Notes.

Amount claimed or amount due as determining jurisdiction of justice of the peace. Ann. Cas. 1912A, 1284.

§ 7056.

The entries in a justice's docket, or a transcript thereof, certified by the justice, is of sufficient evidentiary value to make out a prima facie case of the facts there recorded; but this is so only by virtue of section 7071, post; in the absence of that section, no such rule of evidence could be invoked; and, as the transcript mentioned in this section is not a transcript of the justice's docket, it cannot be given the same force and effect as the transcript last named. *Miller v. Miller*, 47 Mont. 150, 152, 131 Pac. 23.

§ 7057.

Abstract of judgment is no proof of jurisdictional facts. See note post, § 7071.

The code provisions, which authorize the filing and docketing of an abstract of a judgment of a justice of the peace with the clerk of the district court, do not convert such judgment into a final judgment of the district court; they were intended merely to devise a method by which the judgment of the justice, as such, may be made a lien upon the real estate of the defendant and be enforceable by execution in any county of the state. *Pierson v. Daly*, 49 Mont. 478, 481, 143 Pac. 957.

Where the abstract of a justice's judgment has been filed with, and docketed by, a clerk of the district court, an order of the district court quashing an execution issued by the clerk thereon and striking such abstract from the files, is not a special order after final judgment made appealable by section 7098, post. *Pierson v. Daly*, 49 Mont. 478, 483, 143 Pac. 957.

§ 7058.

Though the clerk of the district court may issue the execution, he issues it upon the judgment of the justice, as such, and not upon it as a judgment of the district court, made such by transformation of the justice's judgment; the justice has exclusive control of the execution, whether issued by himself or by the clerk of the district court. *Pierson v. Daly*, 49 Mont. 478, 482, 143 Pac. 957.

§ 7059.

It is clear from the provisions of this section and of section 7060, post, that the lien of the judgment continues for the period of six years from the date of the judgment; not from the date of the filing and docketing. *Pierson v. Daly*, 49 Mont. 478, 481, 143 Pac. 957.

§ 7060.

Duration of judgment lien. See note ante, § 7059.

§ 7070.

It seems that a justice of the peace may take a case under advisement if the parties consent, rather than enter judgment at the close of the trial. *State v. Houston*, 36 Mont. 178, 181, 12 Ann. Cas. 1027, 92 Pac. 476.

§ 7071.

Entries in justice's docket as evidence. See note ante, § 7056.

Judgment, how pleaded. See note ante, § 6571.

Justices' courts are courts of limited jurisdiction. No presumption in favor of their jurisdiction is to be indulged, and the abstract of a justice's judgment is not made evidence of any fact by the statute; hence, where the docket of the justice has been lost, the jurisdictional facts must be made to appear affirmatively. This cannot be done by invoking the aid of presumptions, such as are found in the fifteenth and sixteenth subdivisions of section 7962, post, or by introducing an abstract of the judgment filed with the clerk pursuant to section 7057, ante; and, unless such affirmative proof is made, there is a failure to prove the validity of the judgment. *Miller v. Miller*, 47 Mont. 150, 155, 131 Pac. 23.

APPEALS TO SUPREME COURT.

§ 7096.

Appeal to supreme court in cases appealed to district court. See note post, § 7112.

While all of the decisions of district courts are subject to review by the supreme court, under some appropriate procedure, causes may be removed to it by appeal only under the limitations and regulations prescribed by statute. *Pierson v. Daly*, 49 Mont. 478, 480, 143 Pac. 957.

Editorial Notes.

Remedy for correction of errors in justice's court. Ann. Cas. 1913E, 74.

§ 7097.

While any party aggrieved may appeal, no matter whether the judgment is joint or several, he must serve with notice all parties interested in opposing him, if they formally appeared in the action below. *Spokane etc. Co. v. Beatty*, 37 Mont. 342, 349, 96 Pac. 727.

§ 7098.

Appeal from order affirming revocation of physician's license. See note ante, § 1588.

Jurisdiction of the supreme court. See ante, §§ 6251 and 6252.

Retention of jurisdiction after appeal. See note post, § 7107.

Limitation on review. See note ante, § 7096.

An order of the district court quashing execution on a justice's judgment docketed in the district court is not appeal-

able under this section. See note ante, § 7057.

Remedy for order made in excess of jurisdiction. See post, § 7203.

Under subdivision 3 of this section, an appeal may be taken from a part of an order or judgment decreeing certain persons entitled to share in the distribution of an estate under a will; such an order not being a "final" judgment, but simply a "judgment or order" in probate proceedings. *Estate of Klein*, 35 Mont. 185, 201, 88 Pac. 798.

The expression, "final judgment," as used in the first subdivision of this section, refers only to those judgments, known at common law as final judgments, as defined in section 6710, ante; it does not include statutory determinations termed "orders" or "judgments" in probate proceedings. In *re Roberts' Estate*, 48 Mont. 40, 42, 135 Pac. 909.

Order to disclose assets of a decedent's estate is not a "final judgment," within the meaning of the first subdivision of this section, from which an appeal lies. In *re Roberts' Estate*, 48 Mont. 40, 42, 135 Pac. 909.

The third subdivision of this section provides for appeals from orders and judgments in probate proceedings, and enumerates all those from which appeals lie. In *re Roberts' Estate*, 48 Mont. 40, 42, 135 Pac. 909.

A party aggrieved may appeal from an order granting or refusing a new trial. *Cummings v. Reins Copper Co.*, 40 Mont. 599, 610, 107 Pac. 904.

An order refusing to set aside a judgment is a special one made after final judg-

ment; and, as such is appealable under this section. It cannot be reviewed on appeal from a new trial order, as the two proceedings are separate and distinct from each other. *Canning v. Fried*, 48 Mont. 560, 565, 139 Pac. 448.

An appeal from an order appointing an administrator, and denying a counter-application for such appointment, will be dismissed, if not taken within the sixty days after entry of the order. *In re Antonioli's Estate*, 42 Mont. 219, 222, 111 Pac. 1033.

The action of the court in fixing the amount of an inheritance tax, and in directing its payment may be reviewed on appeal, either from the order itself or from the decree directing the delivery. *State v. District Court*, 41 Mont. 357, 368, 109 Pac. 438.

If no issue is joined in either of two applications for letters of administration heard together, the unsuccessful applicant's motion for a new trial will be denied, because a new trial in a probate proceeding is proper only in a case involving an issue of fact, based upon formal and authorized pleadings; and an appeal from the order denying the motion for a new trial must, therefore, be dismissed. *In re Antonioli's Estate*, 42 Mont. 219, 222, 111 Pac. 1033.

An order sustaining the defendant's motion to exclude evidence is not appealable. *Stephens v. Conley*, 48 Mont. 352, 360, 138 Pac. 189.

No appeal lies from an order annulling an order appointing a receiver; but such order is reviewable upon appeal from the final judgment. *Taintor v. St. John*, 50 Mont. 358, 146 Pac. 939.

An order overruling a motion to quash, upon the return to an alternative writ of mandamus, is not appealable. *State v. Barnett*, 49 Mont. 252, 254, 141 Pac. 287.

No appeal lies from an order striking from the files a pleading or other document constituting a part of the record of the case; no appeal lies from an order of the lower court striking from its file a default judgment entered under section 6537, ante, where final judgment had not been entered when the order was made. *State (ex rel. Smotherman) v. District Court*, 50 Mont. 119, 145 Pac. 724.

An order of the district court correcting the verdict in a civil action is not appealable. *Frank v. Symons*, 35 Mont. 56, 63, 88 Pac. 561.

An order of court requiring a person, charged with concealing or disposing of the assets of a decedent's estate, to make a disclosure of such assets, under sections 7505 and 7506, ante, is not appealable. *In re Roberts' Estate*, 48 Mont. 40, 42, 135 Pac. 909.

A minute entry of an order sustaining a demurrer to the plaintiff's complaint, and directing the dismissal of his action,

is not an order from which an appeal can be taken; the order, in view of section 6710, ante, and section 7139, post, is not a judgment. *Pentz v. Coriscadden*, 49 Mont. 581, 144 Pac. 157.

An order taxing costs is not appealable; and an order overruling a motion to tax costs is reviewable on appeal from the judgment. *Isman v. Altenbrand*, 42 Mont. 188, 198, 111 Pac. 849.

An order authorizing the payment of a fund, deposited in court in condemnation proceedings, to the person entitled thereto is not appealable. *Chicago etc. Ry. Co. v. White*, 36 Mont. 439, 93 Pac. 350.

Editorial Notes.

What judgments and orders may be appealed from. 20 Am. St. Rep. 173.

Order made on motion to dissolve temporary injunction as final or interlocutory. Ann. Cas. 1912C, 898.

Right to appeal from order relating to bill of particulars. Ann. Cas. 1913C, 826.

What is final judgment where judgment of trial court is reversed on appeal but is subsequently affirmed. Ann. Cas. 1913C, 250.

Right to appeal from decree for costs only. 1 L. R. A. (N. S.) 1083.

Appealable judgments or orders in probate or administration proceedings. Ann. Cas. 1913C, 850.

Right to appeal from order granting or refusing writ of assistance. Ann. Cas. 1913D, 1129.

Amount in controversy for purposes of appeal from judgment in consolidated action. 15 Ann. Cas. 492.

Satisfied judgments, when appeals may be prosecuted therefrom. 45 Am. St. Rep. 271.

§ 7099.

Dismissal of appeal. See post, § 7116.

Appeal from order affirming revocation of physician's license. See note ante, § 1588.

An appeal from the judgment of the district court in a case appealed to it from a justice's court, not taken within ninety days after entry of judgment, will be dismissed for lack of jurisdiction in the appellate court. *Hopkins v. Kitts*, 37 Mont. 26, 94 Pac. 201.

An appeal from a final judgment, not taken within one year after entry thereof, will be dismissed. *Reynolds v. Fitzpatrick*, 40 Mont. 593, 595, 107 Pac. 902; *Wilson v. Norris*, 43 Mont. 454, 455, 117 Pac. 100; *Kaufman v. Cooper*, 38 Mont. 6, 9, 98 Pac. 504.

An appeal from a special order, made after final judgment, not taken within the statutory period, sixty days, will be dis-

missed for want of jurisdiction. *Jackway v. Hymer*, 42 Mont. 168, 170, 111 Pac. 720.

Editorial Notes.

Waiver of right to notice of judgment, etc., required to set statute of limitations running against right to appeal. Ann. Cas. 1913B, 439.

Validity of statute validating appeal taken after time to appeal has elapsed. Ann. Cas. 1913D, 1261.

Computation of time for appeal or writ of error as affected by motion for new trial or rehearing. 3 Ann. Cas. 630.

§ 7100.

Dismissal of appeal for insufficiency of undertaking. See note post, §§ 7116 and 7128.

Undertakings may be in one instrument. See note post, § 7107.

The adverse party, on whom notice must be served, is one who has an interest in opposing the object sought to be accomplished by the appeal. *Spokane etc. Co. v. Beatty*, 37 Mont. 342, 350, 96 Pac. 727.

An undertaking filed in conformity with this and the following section need not be signed by the appellant. *Russell v. Chicago etc. Co.*, 37 Mont. 1, 10, 94 Pac. 501.

An "adverse party" is one who is shown by the record to have an interest in opposing the object sought to be accomplished by the appeal; a party not of record is not an "adverse party," upon whom service of notice of appeal is necessary. *Jenkins v. Carroll*, 42 Mont. 302, 307, 112 Pac. 1064; *Cummings v. Reins Copper Co.*, 40 Mont. 599, 610, 107 Pac. 904.

An undertaking on appeal is abortive, if words are used therein, which render it meaningless and nugatory as an indemnity for costs in any amount. In *re Kappler's Estate*, 38 Mont. 419, 422, 100 Pac. 228.

Where different appeals are taken except when combined with an appeal from an order granting or denying a new trial, taken at the same time, the statute requires an undertaking in the sum of three hundred dollars to effectuate each appeal, and unless this requirement is met, or the undertaking is waived, or a deposit is made to take its place, the appeal is ineffective. In *re Kappler's Estate*, 38 Mont. 419, 422, 100 Pac. 228.

After the preliminary stage, in which the court may stay proceedings under section 6798, ante, has passed, the matter of stay is no longer lodged in the discretion of the trial court, but is governed by other provisions of the code which must be complied with pending appeal. *State v. Clements*, 37 Mont. 96, 99, 127 Am. St. Rep. 701, 94 Pac. 837.

Editorial Notes.

Time for filing notice of appeal. 9 Ann. Cas. 731.

Parties entitled to notice of appeal. 13 Ann. Cas. 181.

§ 7102.

Though this section may not provide a stay of execution, in case a writ of mandate is issued by the district court to compel the transfer of a cause from a police to a justice's court (a question not decided), the supreme court may, nevertheless, issue any appropriate writ to insure an appeal. *State v. Horn*, 36 Mont. 420, 93 Pac. 351.

Editorial Notes.

Supersedeas, implied power of courts to issue. 67 Am. St. Rep. 714.

§ 7103.

Undertakings may be in one instrument. See post, § 7107.

The filing of the undertaking, after the amount has been fixed by the court, operates, ipso facto, to stay execution; and the fact that it has been stayed need not be specifically alleged in an action to recover on the undertaking. *Sullivan v. Fried*, 42 Mont. 335, 341, 112 Pac. 535.

A complaint to recover on the undertaking, though indefinite, in failing to allege specifically that the amount of the stay bond was fixed by the court, is sufficient, as against a general demurrer, if the undertaking itself, containing such recital, is set out in the complaint. *Sullivan v. Fried*, 42 Mont. 335, 341, 112 Pac. 535.

If the undertaking contains a number of obligations, the first being in the form of the usual undertaking on appeal, describing the judgment which it is sought to have the court review, and another obligation, in the form of that required to be given under this section to stay execution pending appeal, simply refers to "said judgment so appealed from," the words quoted are sufficient, in an action on the last obligation, to identify the judgment. *Sullivan v. Fried*, 42 Mont. 335, 342, 112 Pac. 535.

§ 7107.

Sufficient identification of judgment, in action on undertaking. See note ante, § 7103.

Undertaking or deposit on appeal. See note ante, § 7100.

In case of different appeals from a final judgment, and an order granting or denying a new trial, taken at the same time, one undertaking in the penalty of three hundred dollars is sufficient. In *re Kappler's Estate*, 38 Mont. 419, 423, 100 Pac. 228.

In view of this section and of sections 6794 and 7098, ante, the trial court, notwithstanding the perfecting of an appeal from a judgment, retains jurisdiction over a motion for a new trial; and an appeal may be taken from an order denying the new trial, although, before such order was entered, an appeal from the judgment has been perfected. *Molt v. Northern Pac. Ry. Co.*, 44 Mont. 471, 477, 120 Pac. 809.

Whatever may be the number of appeals taken at the same time, only one undertaking need be filed, but the penalty in all cases, except where the appeals from the final judgment are combined with an appeal from an order granting or denying a new trial, taken at the same time, must be sufficient in amount to support all of them, and the references must be so made to each of them that the penalty may be properly apportioned. In *re Kappler's Estate*, 38 Mont. 419, 423, 100 Pac. 228.

Recommendation that appeals from orders denying new trials be immediately abolished. *Molt v. Northern Pac. Ry. Co.*, 44 Mont. 471, 477, 120 Pac. 309.

§ 7109.

Though this section may not provide a stay of execution, in case a writ of mandate is issued by the district court to compel the transfer of a cause from a police to a justice's court (a question not decided), the supreme court may, nevertheless, issue any appropriate writ to insure an appeal. *State v. Horn*, 36 Mont. 418, 420, 93 Pac. 351.

Editorial Notes.

Suspension of injunction pending appeal. 38 L. R. A. (N. S.) 436.

§§ 7112-7115.

See §§ 7120a-7120h.

§ 7112.

Where the record on appeal from a judgment simply that the statement on motion for a new trial was never passed upon, the statement was not used "on motion for a new trial" within the meaning of this section. *Harrington v. Butte etc. Min. Co.*, 35 Mont. 531, 90 Pac. 748.

A certificate of the clerk of the district court, stating that the record on appeal in a civil case contains copies of all the papers constituting the judgment-roll, is a sufficient compliance with this section. *Donovan v. McDevitt*, 36 Mont. 61, 66, 92 Pac. 49.

This section requires only those parts of the judgment-roll which are necessary to be considered on the appeal to be brought up in the transcript; hence, the bringing up of the instructions can serve no useful purpose, if the bill of exceptions taken at the settlement is not made up in conformity

with the requirements of section 6785, ante, *Robinson v. Helena Light & Ry. Co.*, 38 Mont. 222, 247, 99 Pac. 837.

After a case has reached the district court, on appeal from a justice's court, the proceedings thenceforth shall be the same as in cases originating in the district court. *Mettler v. Adamson*, 38 Mont. 198, 201, 99 Pac. 441.

See §§ 7120a-7120h, post.

§ 7113.

Certification of copies. See note post, § 7115.

The provisions of this section and of section 7115, post, are mandatory, and were enacted so that the appellate court may know that the record presented to it contains correct copies of the papers which are required for a review. *First Nat. Bank v. Gebo*, 46 Mont. 263, 267, 127 Pac. 463.

Unless the papers specified in this section, certified as required by section 7115, post, are furnished to the appellate court, before the submission of the cause, the judgment will be affirmed. *First Nat. Bank v. Gebo*, 46 Mont. 263, 267, 127 Pac. 463.

The statutory requirement that, on an appeal from an order, the appellate court shall be furnished with a copy of the papers used on the hearing in the court below, is sufficiently complied with where the transcript is certified by the clerk as "a full, true, and correct copy of plaintiff's bill of exceptions." Where such bill purports to be a narrative of "the proceedings had and done" respecting the matter in question, and to contain all the papers relative thereto; and where such bill is settled and certified, by the judge who made the order, as "in all respects a true and correct record of the proceedings had and done in the above-entitled action." *Beller v. Le Bouef*, 50 Mont. 192, 145 Pac. 945.

The record on appeal from an order vacating or refusing to vacate a default consists of the papers used on the motion, whatever they are. *Manuel v. Scott*, 37 Mont. 29, 31, 94 Pac. 487.

Papers, not a part of the record on appeal by statute, can be made a part of it only by bill of exceptions or statement duly certified by the judge. Papers supposedly used at a hearing of a motion to set aside a default, not brought into the record by bill of exceptions nor identified in any way, but merely certified by the clerk as being all the papers used on the motion, are not properly in the record and will be stricken out. *Manuel v. Scott*, 37 Mont. 29, 94 Pac. 487.

See §§ 7120a-7120h, post.

§ 7114.

Misnomer of papers. See note ante, § 6799.

Filing of notice of intention. See note ante, § 6796.

Sufficiency of minutes of court on appeal from new trial order. See note ante, § 6799.

§ 7115.

This section authorizes the clerk or attorneys to certify that the copies provided for in the last three preceding sections are correct copies, but it does not authorize

either to convey to the supreme court, in a certificate, the information that the copies furnished on appeal are copies of the papers actually used as the basis of the order from which the appeal was taken. This information can be furnished only by a bill of exceptions, settled by a certificate of the judge in the usual way. *Latimer v. Nelson*, 47 Mont. 545, 546, 133 Pac. 680.

See §§ 7120a-7120h, post.

§ 7116. Dismissal of Appeals.

If the appellant fails to furnish the requisite papers, the appeal may be dismissed; provided, however, no appeal can be dismissed for insufficiency of or other objection to the undertaking thereon, even though the same may be void, if a good and sufficient undertaking, approved by a justice of the supreme court, be filed in the supreme court before the hearing upon a motion to dismiss the appeal; and provided further, that no appeal can be dismissed for any objections to the record or the brief of the appellant if the cause of such objection is removed by perfecting the record or brief to the satisfaction of the court or a justice thereof before the hearing of a motion to dismiss. All objections to the record and brief of appellant shall be deemed waived unless a motion to dismiss is made because thereof, except such as will prevent a fair hearing, consideration and decision of the appeal on its merits; and as to any such objection the court may, in its discretion permit a compliance with the provision of the law or rule of court violated within such time and upon such terms as may be just. [Amendment approved Mar. 3, 1909; Laws 1909, p. 55.]

Dismissal of appeal. See note ante, § 7099.

Submission of agreed cases. See note post, § 7254.

If the original undertaking on appeal is void, the filing of a substituted undertaking, though approved as required, does not preserve the appeal; but it does do so, if the undertaking is not wholly void; and this construction applies to a defective undertaking, under section 7128, post, on appeal to the district court. *Marlowe v. Michigan Stove Co.*, 48 Mont. 342, 345, 137 Pac. 539.

To justify the dismissal of an appeal, upon the ground that there is no real controversy to be determined and that the parties have entered into collusion with each other to have the case heard merely to enable them to ascertain what the law is,

for some ulterior purpose, it must appear, at least with reasonable certainty, that the parties in the particular case are guilty of the abuse charged as the ground of the motion; otherwise, the appeal will be retained and the case heard on its merits. *Carlson v. City of Helena*, 38 Mont. 581, 586, 101 Pac. 163.

Editorial Notes.

Deposition of appeal where without fault of appellant the record is lost or incomplete. 25 L. R. A. (N. S.) 860.

§ 7117.

The dismissal of an appeal operates to affirm the decree of the district court. *Carlson v. City of Helena*, 43 Mont. 1, 5, 114 Pac. 110.

§ 7117a. Review of Verdict or Decision and Intermediate Orders.

Upon an appeal from a judgment, the court may review the verdict or decision, and any intermediate order or decision excepted to, which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

This is section 1742 of the Code of Civil Procedure, which was omitted inadvertently from the Revised Codes of 1907. It has been cited and construed in *Great Falls*

Meat Co. v. Jenkins, 33 Mont. 417, 84 Pac. 74; *Frank v. Symons*, 35 Mont. 56, 88 Pac. 561.

§ 7118.

Exceptions of both parties may be incorporated in the record. See ante, § 6792.

Grounds for granting new trial. See note ante, § 6794.

Reversal, affirmance, or modification of judgment in criminal cases. See post, § 9417.

When judgment in improper form is no ground for reversal. See note post, § 7536.

This section requires the supreme court to review the errors made, not only against the appellant, but also those made in his favor, if they are made to appear in the record by bill of exceptions, and prohibits the reversal of the judgment upon any error complained of by the appellant, if, but for the error against the respondent, the result of the trial would have been the same. In re Murphy's Estate, 43 Mont. 353, 375, Ann. Cas. 1912C, 380, 116 Pac. 1004.

An order correcting a verdict in a civil action may be reviewed on appeal from the judgment. Frank v. Symons, 35 Mont. 56, 63, 88 Pac. 561.

On a plaintiff's appeal from a judgment for the plaintiff, the defendant cannot complain where he has not appealed nor even, by cross-assignment in his brief, asked that the judgment be modified. Williams v. Johnson, 50 Mont. 7, 144 Pac. 768.

The supreme court will dispose of a case according to the substantial rights of the parties, as shown upon the record. Manhattan Co. v. White, 48 Mont. 565, 568, 140 Pac. 90.

The rule that an order granting a new trial will be upheld, if any ground of the motion supports such order, is applicable only where the order is a general one, not disclosing the particular ground upon which the court acted, or where counsel have invoked the provisions of this section for the compensation of errors. Harrington v. Butte Miner Co., 48 Mont. 550, 553, 51 L. R. A. (N. S.) 369, 139 Pac. 451.

Where the plaintiff, on appeal from a judgment in his favor, complains that it is for an insufficient amount, but the defendant correctly insists that the complaint is insufficient to support any judgment, the supreme court will reverse the judgment with directions to sustain the demurrer to the complaint. Manhattan Co. v. White, 48 Mont. 565, 567, 140 Pac. 90.

Where no objection was made to an instruction, and no exception taken, the action of the court respecting the instruction will not be reviewed. De Sandro v. Missoula L. & W. Co., 48 Mont. 226, 247, 136 Pac. 711.

The losing party will not be heard to assert on appeal, for the first time, that there was a fatal variance. Mosher v. Sutton's New Theater Co., 48 Mont. 137, 149, 137 Pac. 534.

Upon the return of the cause on remittitur, the supreme court may order the dis-

trict court to correct the judgment to comply with section 7536, post. Gauss v. Trump, 48 Mont. 92, 102, 135 Pac. 910.

Though an order sustaining a motion to strike out part of the defendant's answer is part of the record on appeal, it cannot be reviewed where the original pleading against which the motion was directed is no longer a part of the record. Bordeaux v. Bordeaux, 43 Mont. 102, 106, 115 Pac. 25.

Editorial Notes.

Reversal of judgment for technical violation of rule that allegations and proof must agree. Ann. Cas. 1913D, 68.

Right of appellate court to reverse judgment sua sponte, for variance. Ann. Cas. 1914A, 468.

§ 7119.

Duty of supreme court in rendering judgment. See ante, § 6593.

Judgment upon appeal in criminal actions. See post, § 9415.

Powers of supreme court. See ante, § 6253.

Remitting part of damages, or new trial, where damages are excessive. See note ante, § 6794.

Reversal, affirmance, or modification of judgment in criminal cases. See post, § 9417.

In an action at law, the judgment, if it awards a larger measure of relief than is warranted by the verdict, will be modified on appeal to conform to the verdict. A new trial is not necessary for that purpose. Consolidated etc. Min. Co. v. Struthers, 41 Mont. 565, 570, 111 Pac. 152.

Editorial Notes.

Constitutional power of appellate court upon reversing judgment for plaintiff on verdict, to direct a judgment for defendant without remanding the case for a new trial. 2 L. R. A. (N. S.) 362.

Reversal, effect of. 28 Am. Dec. 368; 96 Am. St. Rep. 124.

Restitution of persons dispossessed under the reversed judgment. 17 Am. St. Rep. 264.

Effect of reversal where appeal is taken from part of judgment only. Ann. Cas. 1913E, 1323.

Reversal of judgment as against some persons sued as joint tort-feasors without reversing as to others. 27 L. R. A. (N. S.) 212.

Imposition of costs as condition of granting new trial for insufficiency of evidence. 7 Ann. Cas. 183; 20 Ann. Cas. 41.

§ 7120.

Appeal, how taken. See note post, § 7124.

Interest on judgment. See note post, § 7173.

The duty of entering, on the clerk's docket of the district court, the judgment of the supreme court rendered in any cause before it on appeal, is a purely ministerial one, the performance of which devolves upon the clerk of the district court; and mandamus does not lie to compel the district court, or a judge thereof, to perform such duty. *State v. District Court*, 42 Mont. 170, 174, 111 Pac. 731.

It is proper for the clerk of the trial court to sign and record a formal judgment,

on receipt of a remittitur from the clerk of the supreme court. *State v. Reece*, 43 Mont. 291, 293, 115 Pac. 681.

The mandate of the supreme court to the court below, to set aside its former judgment and enter one as directed, must be interpreted in the light of the statute laws governing the entry of judgment after appeal. The direction to enter judgment, as instructed, must be construed as addressed to the clerk of the trial court. *State v. Reece*, 43 Mont. 291, 293, 115 Pac. 681.

§ 7120a. Appeal to Supreme Court—Records and Papers.

(Section 1.) All pleadings, docket entries, minute entries, judgments, all the minutes of the trial court, including all papers and files, all testimony, exhibits and other evidence, whether settled in a bill of exceptions or statement of the case or not, shall be deemed to be brought up by an appeal and to be subject to review and to be deemed part of the record on appeal in all cases. It shall not, however, be necessary actually to bring all such papers before the supreme court or to print them; only such as may be material or proper or necessary to be considered on the appeal need be brought up or printed.

The supreme court may ordain rules to regulate the manner in which any such papers may be brought up. In the absence of such rules, the following procedure may be followed:

If the appellant desire to incorporate in his transcript all or a part of the stenographer's notes or transcript, or any paper or matter not appearing in the judgment-roll or in a bill of exceptions or statement of the case, he shall serve upon the opposite parties or their attorneys, at or prior to the time of the filing of the notice of appeal, or within five days thereafter, and file with the clerk of the district court, a praecipe stating what papers and what, if any, part of the stenographer's notes or transcript he desires to have incorporated in the transcript on appeal. Within fifteen days thereafter or such further time as may be granted by the district court or judge or by the supreme court or a judge thereof, any other party to the case or person having a right to be heard thereon, may serve on the appellant or his attorneys and file with the said clerk praecipe specifying what other matters or other evidence or parts of evidence he desires to have incorporated in the transcript on appeal. A transcript of the papers so designated by their respective parties shall, unless ordered by the supreme court, be deemed sufficient for all purposes of the appeal, unless suggestion be made to the supreme court of a diminution of the record or of some incorrectness therein. If such suggestion be made, such disposition shall be made thereof as justice may require. In case of disagreement between parties regarding the insertion of any matter in the transcript or its omission, the questions arising shall be, after notice to the parties, settled, by the judge who tried the case or made the order, subject to summary review by the supreme court; and the supreme court shall also have power to act, in the first instance, regarding such questions, if it shall deem proper. At the request of any of the parties, any or all original papers and files in the case, other than the judgment-roll, shall be forwarded to the clerk of the supreme court by the clerk of the district court with a certificate of identity by the judge of the district court or the clerk thereof. The supreme court may in any case order the judgment-roll to be sent up. [Approved March 18, 1915; Laws 1915, c. 149, p. 423.]

§ 7120b. Transcript of Proceedings by Stenographer.

(Section 2.) In any case where the proceedings upon a trial or hearing have been reported by the official stenographer or by a stenographer pro tempore, or a stenographer agreed upon in writing or in open court by the parties, and his notes shall have been transcribed and filed with the clerk and shall have been certified by the court or judge as correct, after notice to the parties, or agreed to by written stipulation of the attorneys, such transcript may, at the request of either party, be forwarded to the clerk of the supreme court, with the transcript on appeal and with a certificate of identity by the clerk of the district court, and shall then be deemed to be before the supreme court for all purposes of the appeal, but in such case, the same need not be printed in whole or in part unless directed by the court. Such stenographer's transcript may be referred to by the supreme court for the decision of any matter before the court, including questions of the sufficiency of the evidence, and regarding the settlement of instructions, as fully as if it had been part of a bill of exceptions or statement of the case, as well as to supplement the record or correct any insufficiency or defect therein. This provision, however, shall not be construed as relieving the appellant from having the same printed as a part of the transcript on appeal when requisite for the purpose of his appeal, nor relieve the respondent from the necessity of specifying in his praecipe what, if any parts or additional parts of such stenographer's transcript he desires incorporated in the transcript on appeal by the clerk of the district court. Such stenographer's transcript when certified or agreed to as aforesaid shall also serve any and all of the purposes of a bill of exceptions or statement of the case, and may be used in all cases where a bill of exceptions or statement is now required. In all cases where a part only of the stenographer's notes shall be sufficient for the purposes of review or of the appeal, such part may be transcribed and certified or agreed to, as above provided, and with like effect and authority with respect to the matters included therein. The notice of hearing on the certification of the stenographer's transcript may be given by any party to the others, and shall be served as other notices are required to be served, and the time thereof, shall be five days, or such other period as the district court or the judge thereof may order. Such stenographer's transcript may be filed in the office of the clerk of the district court and certified, at any time, but this provision shall not affect any rule of the supreme court limiting the time for the filing of transcripts in said court, nor limit the power of the district court or judge to compel the stenographer to file the same. It shall be the duty of the judge to settle the correctness thereof and when settled to certify the same. In case of refusal or inability of the judge to settle and certify the same, in accordance with the facts, such transcript may be settled by the supreme court on application in like manner as in cases of bills of exception. The supreme court or a judge thereof shall have discretionary power by writ, or summary proceedings, to compel the stenographer to perform his duties in connection with such transcript. [Approved March 18, 1915; Laws 1915, c. 149, p. 424.]

§ 7120c. Imposition of Terms, Costs and Penalties.

(Section 3.) The supreme court may, in any case, impose terms, costs and penalties upon the making of any order relating to the transcript on appeal or diminution thereof, or to the transcript of the stenographer's

notes, or to the printing of such papers, regardless of the final determination of the appeal, and allow or disallow costs in connection with these matters when disposing of the same. [Approved March 18, 1915; Laws 1915, c. 149, p. 425.]

§ 7120d. Certificate of Clerk as to Correctness of Transcript.

(Section 4.) In all cases, a certificate of the clerk of the court from which the appeal is taken, or a stipulation of the attorneys as to the correctness of the transcript, and that the papers therein incorporated were on file in the court below at the time of the decision, or, as the case may be, of any judgment or order brought up for review or appealed from, shall be prima facie sufficient to identify all the matters in the record and to attest their correctness, make them part of the record on appeal, and entitle them to be considered. If any dispute or question shall arise regarding the correctness of such stipulation or certificate, or of the record on any point, the supreme court shall have power to hear and determine such disputes or questions, take evidence concerning the same, and make any ruling or order that may be proper in the premises, and may do all of these things of its own motion.

(Section 5.) In all cases of insufficiency or other defectiveness in the transcript or papers on appeal, the appellant or other party in interest may be allowed to complete or correct the same. And, in case any certificate required to be made by the district court, or a judge thereof, or the clerk of the district court, to be found defective, the same may be corrected by amendment or by the filing of a new certificate, with the same effect if such certificate had been made or filed in due form and time, in the first instance; leave being first obtained from the supreme court. In all such cases, the supreme court may impose such terms, costs or penalties upon the party responsible for the insufficiency or defect as to the court may seem proper. [Approved March 18, 1915; Laws 1915, c. 149, p. 425.]

§ 7120e. Rules of Supreme Court.

(Section 6.) The supreme court may make rules and orders in furtherance of the purposes of this act, and make further regulations concerning the matters mentioned in this act. [Approved March 18, 1915; Laws 1915, c. 149, p. 426.]

§ 7120f. Act Does not Prohibit Bill of Exceptions or Statement.

(Section 7.) Nothing in this act [§§ 7120a-7120h hereof] shall be deemed to prohibit the settlement of a bill of exceptions or a statement of the case, and, if desired, the same may be done, as in such cases provided, but without prejudice to the provisions of this act; nor shall anything in this act be deemed to repeal any provision of law relating to stenographers. [Approved March 18, 1915; Laws 1915, c. 149, p. 426.]

§ 7120g. Invalidity of Part of Act Does not Affect Remainder.

(Section 8.) If any section, sentence or clause of this act shall, for any reason, be held invalid or inoperative, the remaining portions of the act shall not therefore be deemed invalid or inoperative; it being the intention of the legislature, hereby expressly declared, to enact each section, sentence and clause of this act, irrespective of whether any one or more sec-

tions, sentences or clauses thereof, be found to be invalid or inoperative. [Approved March 18, 1915; Laws 1915, c. 149, p. 426.]

§ 7120h. Return of Original Files to District Court.

(Section 9.) All original papers transmitted to the supreme court or to the clerk thereof shall be returned to the clerk of the district court, with the remittitur, or at such other time as may be ordered by the supreme court.

(Section 10.) All laws or parts of laws in conflict with this act are hereby repealed.

(Section 11.) This act shall take effect at the time of its passage. [Approved March 18, 1915; Laws 1915, c. 149, p. 426.]

APPEALS TO DISTRICT COURT.

§ 7121. Time for Appeals from Justice's Court—Notice.

Any party dissatisfied with the judgment rendered in a civil action in a police or justice court may appeal therefrom to the district court of the county at any time within thirty days after the rendition of the judgment. The appeal is taken by serving a copy of the notice of appeal on the adverse party or his attorney and by filing the original notice of appeal with the justice or judge. The order of serving and filing is immaterial. [Amendment approved January 31, 1911; Laws 1911, p. 8.]

An appeal from a justice's court is taken by filing a notice of appeal with the justice and serving a copy thereof on the adverse party or his attorney. *Thien v. Wiltse*, 49 Mont. 189, 192, 141 Pac. 146.

The appeal from a justice's court to the district court is taken by serving a copy of the notice of appeal on the adverse party or his attorney and by filing the original notice with the justice or judge. The order in which these acts are done is not important. *State v. District Court*, 48 Mont. 477, 479, 138 Pac. 1100.

As to undertaking. See note post, § 7124.

Necessity of filing notice of appeal. See note post, § 7124.

Necessity of compliance with the statute. See note post, § 7127.

Appeals are statutory, and the appellant must proceed as the statute requires, particularly with respect to appeals from such bodies as a board of county commissioners. *Thien v. Wiltse*, 49 Mont. 189, 192, 141 Pac. 146.

An adverse party is one who has an interest in opposing the object sought to be accomplished by the appeal; but it does not follow that one who is neither a necessary nor a proper party to the action must be considered adverse merely because he appears as such upon the record. *Anderson v. Red Metal Min. Co.*, 36 Mont. 312, 323, 93 Pac. 44.

The appeal lies from a judgment, and only from a judgment. *Thien v. Wiltse*, 49 Mont. 189, 192, 141 Pac. 146.

An appeal lies to the district court, from a judgment of the justice's court, setting aside an order of dismissal; for this reason, such order cannot be reviewed on certiorari. *State v. Smith*, 42 Mont. 492, 495, 113 Pac. 294.

Where, in an action in a justice's court, brought by the assignee of an account, the debtor interpleads the assignor and another, and the debtor admits the assignment and disclaims any interest in the subject matter of controversy, he is not an adverse party upon whom service of notice of appeal must be made. *Anderson v. Red Metal Min. Co.*, 36 Mont. 312, 323, 93 Pac. 44.

The notice of appeal has a purpose to fulfill. It performs the office of a summons; and, if it fails to inform the adverse party of what he is to meet, as, where the date of the judgment is not given, so that the judgment cannot be identified, the notice of appeal is insufficient to give the district court jurisdiction. *State v. District Court*, 41 Mont. 100, 103, 21 Ann. Cas. 1307, 108 Pac. 580.

The notice of appeal must describe the particular judgment or order appealed from by reference to the court that rendered it, to the parties litigant, and to the date and amount or character of the judgment, in terms sufficiently specific to identify it, without resort to extrinsic evidence. *State v. District Court*, 41 Mont. 100, 103, 21 Ann. Cas. 1307, 108 Pac. 580.

§ 7122.

Trial de novo. See post, § 7127, and note.

The rule of practice under this section applies in criminal cases. In *re Graye*, 36 Mont. 397, 93 Pac. 266.

On appeal from a justice's court, the district court does not sit as a court of review, but tries the cause de novo; therefore, by taking the appeal, irregularities attending the rendition of judgment are waived. *State v. O'Brien*, 35 Mont. 482, 491, 10 Ann. Cas. 1006, 90 Pac. 514.

Upon the removal of a cause to the district court, it stands for trial de novo; and, in view of section 7124, post, it is questionable whether the appeal, after it has been perfected, can be withdrawn or dismissed by the appellant. *Valadon v. Lohman*, 46 Mont. 144, 148, 127 Pac. 88.

Whatever may be the scope of investigation by the district court, on appeal from a justice's court, the appeal lies only from a judgment; it cannot be taken from a mere order made by the justice, such as an order sustaining a motion of the defendant to set aside a default judgment against him, to open the default, and to permit an answer to be interposed. *Burch v. Roberson*, 47 Mont. 456, 457, 132 Pac. 1132.

Editorial Notes.

Jurisdiction of court to try case de novo on appeal where lower court was without jurisdiction. Ann. Cas. 1913C, 120.

Remedy for correction of errors in justice's court. Ann. Cas. 1913E, 74.

Power of superior court with respect to justice's judgment where transcript has been filed in that court. Ann. Cas. 1914A, 415.

§ 7123.

Necessity of transmitting papers. See note post, § 7124.

Prompt action is required of the appellant, in so far as he is responsible for the filing of the papers. He is subject to the penalty of having his appeal dismissed, if, without excuse, he is guilty of laches. He cannot hold the appeal in abeyance and prevent the adverse party from bringing the case to a hearing in the district court. *Bush v. Baker*, 46 Mont. 535, 547, 129 Pac. 550.

If the appellant is not in fault, he may invoke the power of the court to compel the transmission of the papers; and, in flagrant cases, the district court may impose a fine for dereliction on the part of the justice. *Bush v. Baker*, 46 Mont. 535, 547, 129 Pac. 550.

§ 7124.

Adversary parties in actions against counties. See note ante, § 2947.

Anyone may waive the advantage of a law intended solely for his benefit. See ante, § 6181.

Bond is required on appeal from allowance or disallowance of claim against county. See ante, § 2947.

Bond is required on appeal from action of state board of medical examiners in refusing a license to practice medicine. See ante, § 1588.

Right of appellant to withdraw or dismiss appeal. See note ante, § 7122.

The required steps are essential to jurisdiction. See note post, § 7127.

Appeal from allowance or disallowance of claim against county. See ante, § 2947.

Appeal from action of state board of medical examiners in refusing a license to practice medicine. See ante, § 1588.

The practice that prevails in taking an appeal from a justice's court to the district court applies to the action of a board of county commissioners respecting an application to sell liquor in any place not within the corporate limits of a city or town. In such cases, an appeal may be taken to the district court. The position of the board is the same as that of the justice, because the statute, Laws of 1913, chapter 35, section 3, accords to communities, outside of incorporated cities and towns, the right to appear before the board and oppose the issuance of the license, thus making the applicant and protestants adversary parties. *State v. District Court*, 48 Mont. 477, 481, 138 Pac. 1100.

Where the protestants against the issuance of a retail liquor license, under the laws of 1913, take an appeal, but omit to file either a notice of appeal or an undertaking with the board of commissioners, and there is no waiver by the adverse party, the applicant for the license, the district court does not acquire jurisdiction of the appeal. *State v. District Court*, 48 Mont. 477, 481, 138 Pac. 1100.

On appeal from the determination of a board of county commissioners, in granting a retail liquor license, no undertaking is necessary. *Thien v. Wiltse*, 49 Mont. 189, 193, 141 Pac. 146.

The provisions of section 1588, ante, prescribing the methods of taking appeals from the determinations of the board of medical examiners, in certain instances, do not apply to an appeal from the action of a board of county commissioners, relative to an application for a retail liquor license, outside of incorporated cities or towns. *State v. District Court*, 48 Mont. 477, 481, 138 Pac. 1100.

Appeals are statutory, and the appellant must proceed as the statute requires, but he is not obliged to do more than the statute prescribes. He need not give an undertaking unless the statute requires it. *Thien v. Wiltse*, 49 Mont. 189, 194, 141 Pac. 146.

An appeal from a justice's court presents three defined stages: First, the taking of the appeal, which occurs when notice of the proper character is properly filed and served; second, the perfecting of the appeal or rendering it effectual, which occurs upon the filing of the undertaking; third, the hearing, which occurs when the trial de novo is had in the district court. *Thien v. Wiltse*, 49 Mont. 189, 194, 141 Pac. 146.

To make an appeal from a justice's court effective, a notice of appeal, as provided in section 7121, ante, as amended in 1911, as well as an undertaking, provided for in this section, must be filed with the justice; and, within ten days after receiving the notice and the undertaking, the justice must, as required by section 7123, ante, transmit all the papers in the case to the clerk of the district court. *State v. District Court*, 48 Mont. 477, 480, 138 Pac. 1100.

The appeal is taken by filing and serving the notice of appeal, but it is ineffectual for any purpose unless the required undertaking is filed. *State v. District Court*, 41 Mont. 100, 102, 21 Ann. Cas. 1307, 108 Pac. 580.

There is a clear distinction between the taking and the perfecting of an appeal. An appeal is taken when a notice of appeal is served and filed. The filing of an undertaking perfects the appeal, but it is not a part of the taking, in the statutory sense. *Thien v. Wiltse*, 49 Mont. 189, 193, 141 Pac. 146.

Where the statute says that an appeal shall be "taken and heard" as appeals from justices' courts, omitting the word "perfected," it is not necessary to give an undertaking. *Thien v. Wiltse*, 49 Mont. 189, 194, 141 Pac. 146.

If all the requirements of this section, relative to amounts and conditions, are complied with in an undertaking on appeal to the district court, the inclusion of additional conditions, in no way affecting the liability, under the statute, of the sureties, does not render such undertaking invalid. *Marlowe v. Michigan Stove Co.*, 48 Mont. 342, 344, 137 Pac. 539.

The right to require the sureties on the undertaking on appeal to justify is personal to the exceptant, and may therefore be waived by him. *Bush v. Baker*, 46 Mont. 535, 545, 129 Pac. 550.

Any irregularity in the examination of sureties and the approval of the undertaking is waived where no objection is made. *Bush v. Baker*, 46 Mont. 535, 545, 129 Pac. 550.

§ 7127.

If any of the necessary steps, in taking

an appeal from a justice's court to the district court are omitted, the district court is without jurisdiction to entertain the appeal. Such appeals, though provided for by the Constitution, are subject to statutory regulation and the mode prescribed for taking them is exclusive. *Jenkins v. Carroll*, 42 Mont. 302, 311, 112 Pac. 1064.

Until the notice of appeal is filed and served as prescribed, and the undertaking given, and, if required, the sureties thereon, or others in their stead, justify after notice and within five days, the district court does not acquire jurisdiction of the subject matter or of the parties. *Jenkins v. Carroll*, 42 Mont. 302, 312, 112 Pac. 1064.

On appeal from a justice's court, the trial is de novo, but the district court, though proceeding with the trial as in other cases, acquires its jurisdiction by appeal, under the statute, and its jurisdiction must affirmatively appear. *Jenkins v. Carroll*, 42 Mont. 302, 312, 112 Pac. 1064.

The discretionary power of the district court to dismiss an appeal from a justice's court for delay in bringing it to a hearing should not be exercised where there is a reasonable excuse for the delay, and where it is apparent that the adverse party has not suffered prejudice by reason of the delay. *Bush v. Baker*, 46 Mont. 535, 547, 129 Pac. 550.

Instance of abuse of discretion in dismissing, on motion, an appeal from a justice's court for alleged lack of diligence in prosecuting it, where counsel for the appellant was prevented from attending to matters of business by reason of illness. *Bush v. Baker*, 46 Mont. 535, 548, 129 Pac. 550.

§ 7128.

The construction given to section 7116, ante, applies to this section. If the undertaking under this section is not wholly void, it is proof against dismissal for insufficiency; and it is not wholly void where, in one clause, it effectively secures the payment of costs. *Marlowe v. Michigan Stove Co.*, 48 Mont. 342, 346, 137 Pac. 539.

On appeal from the determination of a board of county commissioners, in granting a retail liquor license, no undertaking is necessary. *Thien v. Wiltse*, 49 Mont. 189, 193, 141 Pac. 146.

The filing of the undertaking is no part of the taking of the appeal. The appeal may be preserved, notwithstanding the undertaking is defective or irregular, if a good one is substituted at or before the hearing of the motion to dismiss. *Thien v. Wiltse*, 49 Mont. 189, 193, 141 Pac. 146.

MOTIONS AND ORDERS.

§ 7139.

An order is not a judgment. *Pentz v. Corseadden*, 49 Mont. 581, 144 Pac. 157.

§ 7141.

Disregarding errors or defects. See ante, § 6593.

The notice mentioned in this section is a notice of a motion. The section is not applicable to an issue raised in a probate matter, such as that presented by a petition for distribution and the written objections thereto. In *re Peterson's Estate*, 49 Mont. 96, 97, 140 Pac. 237.

A defendant who appears generally, and resists a motion on its merits to amend the complaint, must be presumed to have submitted himself to the jurisdiction of the

court, for all the purposes of the motion, and he cannot complain of insufficient notice. *Eadie v. Eadie*, 44 Mont. 391, 394, Ann. Cas. 1913B, 479, 120 Pac. 239.

§ 7144.

A decree for separate maintenance recovered by a married woman may be enforced by execution. *Raymond v. Blanegrass*, 36 Mont. 449, 458, 15 L. R. A. (N. S.) 976, 93 Pac. 648.

NOTICES AND SERVICE.

§ 7145.

Notice of entry of judgment must be a legal notice. See note ante, § 6796.

§ 7146.

Notice of entry of judgment must be a legal notice. See note ante, § 6796.

§ 7147.

Whether an affidavit of service of notice of intention to move for a new trial, made by mail, under this and the following section, is fatally defective, where it does not appear that the person making the service, and the one upon whom it is made, reside at or have their offices in different places, is a question upon which the members of the court are divided in opinion. *Curn v. Perkins*, 40 Mont. 588, 591, 107 Pac. 901.

§ 7148.

Defective affidavit. See note ante, § 7147.

§ 7149.

Copy of complaint to be served with summons. See ante, § 6518.

Necessity of serving amended complaint. See note ante, § 6588.

Judgment by default. See ante, § 6719.

Notice of intention to move for a new trial. See ante, § 6796.

The provision of this section that, where a defendant has not appeared, service of

notice or papers need not be made upon him, etc., does not apply to a case where an amended complaint is filed before the time for appearance has expired and before any appearance has been made. *Ben Kress Nursery Co. v. Oregon Nursery Co.*, 45 Mont. 494, 496, 124 Pac. 475.

A voluntary general appearance gives jurisdiction over the persons of nonresidents. *State v. District Court*, 40 Mont. 359, 362, 135 Am. St. Rep. 622, 106 Pac. 1098.

The entry of judgment is one of the "subsequent proceedings," herein mentioned, of which a defeated party or his attorney is entitled to notice. *State v. District Court*, 38 Mont. 119, 123, 99 Pac. 139.

If a defendant files nothing but a motion to dissolve a temporary injunction granted, until the time for answering has expired, his default is properly entered without notice, conceding such motion to be an appearance. The summons notified him that default would be taken, etc.; and, if he takes no steps to arrest the running of time, it is unnecessary to notify him again. *Donlan v. Thompson Falls C. & M. Co.*, 42 Mont. 257, 265, 112 Pac. 445.

Editorial Notes.

Waiver of special appearance by pleading to merits. 4 Ann. Cas. 290.

Appearance for purpose of moving to set aside attachment for lack of jurisdiction as general or special appearance. 18 Ann. Cas. 913.

COSTS.

§ 7154.

Under this section and section 7155, post, one who successfully prosecutes a writ, prohibiting a justice of the peace from proceeding further in an action in which the justice has unlawfully issued a search warrant, is entitled to his costs. In such cases the prevailing party is entitled to his costs as a matter of course. *State v. Justice's Court*, 45 Mont. 375, 382, 48 L. R. A. (N. S.) 156, 123 Pac. 405.

§ 7155.

Right to costs as a matter of course. See note ante, § 7154.

§ 7162.

If an administrator, who has prosecuted a number of appeals to the supreme court, is not shown to have acted in bad faith, the action of the lower court in allowing him credit in his account for costs incurred in taking the appeals should be sustained. *Estate of Davis*, 35 Mont. 273, 282, 88 Pac. 957.

An allowance to an administrator for attorney fees for additional and special counsel in the matter of the estate is held to have been unwarranted in the *Estate of Davis*, 35 Mont. 273, 282, 88 Pac. 957.

§ 7166.

It is error, in a suit to foreclose a mechanic's lien, to allow items charged for the preparation and verification of the lien and for an abstract of title to the property covered by the lien. *Neuman v. Grant*, 36 Mont. 77, 81, 92 Pac. 43.

Reference to cases holding that a statute allowing an attorney's fee to the claimant of a mechanic's lien is unconstitutional. *Mills v. Olsen*, 43 Mont. 129, 140, 115 Pac. 33.

§ 7169.

Memorandum of costs may be amended. See note ante, § 6589.

Mileage of witnesses. See note ante, § 3182.

A memorandum of items of cost, served on the opposite party and filed with the clerk, is prima facie evidence that the items were necessarily expended and properly taxable, and the burden of showing the contrary is on the party taking that ground. *Brande v. Babcock Hardware Co.*, 35 Mont. 264, 88 Pac. 949.

A verified memorandum of costs and disbursements, prepared by the successful party, is prima facie evidence that the amounts named therein were necessarily expended, and the burden of overcoming the prima facie showing thus made is upon the losing party. *Isman v. Altenbrand*, 42 Mont. 188, 199, 111 Pac. 849.

The cost of taking a party's deposition for himself is not properly taxable as costs against the other party. *Isman v. Altenbrand*, 42 Mont. 188, 199, 111 Pac. 849.

The reasonable expenses for making a map, if required or necessary to be used, are properly taxable. The original memorandum, if verified, is prima facie evidence that the amounts named therein were necessarily expended; and the burden of overcoming such showing is on the party objecting to the taxation. *Kelly v. City of Butte*, 44 Mont. 115, 123, 119 Pac. 171.

Editorial Notes.

Taxation as costs of fees, mileage, etc., of witnesses subpoenaed but not called on to testify. 6 Ann. Cas. 1017.

Attorney's fees out of fund in creditors' suits. 54 L. R. A. 817.

§ 7170.

The "decision" is the findings of fact and conclusions of law, signed by the court and filed with the clerk. *McDonnell v. Huffine*, 44 Mont. 411, 428, 120 Pac. 792.

The five days must be computed from the date upon which the court's written findings and conclusions of law are filed, and not from the day on which the court orally an-

nounced its decision. *McDonnell v. Huffine*, 44 Mont. 411, 428, 120 Pac. 792.

A litigant who does not claim his costs as provided in this section is not entitled to them. A court cannot award costs without a showing that this section has been complied with. *Butte N. C. Co. v. Radmilovich*, 39 Mont. 157, 164, 101 Pac. 1078.

An affidavit to a memorandum of costs, made by one of the defendant's attorneys, stating that the memorandum is true and correct, and that the items are reasonable and were necessarily incurred in defense of the cause, to the best of affiant's knowledge and belief, substantially complies with this section. *Hoskins v. Northern Pac. Ry. Co.*, 39 Mont. 394, 404, 102 Pac. 988.

§ 7173.

Entry of judgment after remittitur. See note ante, § 7120.

This section may very well be construed as applying to judgments rendered or ordered by an appellate court. At any rate, it should be so applied as to make it the duty of the clerk below, in the absence of specific directions as to interest, to include, in the judgment, interest from the date of the order of the supreme court to the time of entry of the judgment. *State v. Reece*, 43 Mont. 291, 293, 115 Pac. 681.

In carrying out the provisions of this section, the clerk acts merely in a ministerial capacity. *Butte N. C. Co. v. Radmilovich*, 39 Mont. 157, 164, 101 Pac. 1078.

§ 7188.

Though a judgment is defined in section 6710, ante, as the final determination of the rights of the parties, the action or proceeding must be regarded as still pending within the meaning of this section (7188), until the happening of one or more of the events enumerated therein. *Peterson v. City of Butte*, 44 Mont. 129, 133, 120 Pac. 231.

Editorial Notes.

When action is pending. Ann. Cas. 1912A, 843.

§ 7190.

Preparation and filing of bill of exceptions. See ante, § 6788.

The constitutionality of a statute that attempts to give a court power to extend time will not be considered by the supreme court on appeal unless the necessity of passing upon that question is urgent and imperative. *Sanden v. Northern Pac. Ry. Co.*, 39 Mont. 209, 211, 102 Pac. 145.

The time for presenting a bill of exceptions for settlement cannot be extended for a period of time exceeding ninety days, without the consent of the adverse party. *Canning v. Fried*, 48 Mont. 560, 562, 139 Pac. 448.

Where, without the consent of opposing counsel, defendant obtained extensions of time for the preparation of a bill of exceptions in support of a motion for new trial, amounting to ninety-four days, the court was without jurisdiction to determine the motion on its merits. *Evans v. Oregon Short Line R. Co.* (Mont.), 149 Pac. 715.

§ 7191.

Practice where the sheriff is sued for conversion. See note ante, § 6673.

§ 7195.

The appeal becomes effective upon the filing of an undertaking, accompanied by the required affidavits, subject to the appel-

lee's right to test the responsibility of the sureties. *Bush v. Baker*, 46 Mont. 535, 545, 129 Pac. 550.

§ 7196.

Where a mandamus proceedings by the state is instituted against a mayor to compel him to reinstate a lieutenant of police, who has been removed, and the mayor appeals from a judgment awarding an alternative writ, he is not required to furnish an undertaking. *State v. Duncan*, 49 Mont. 614, 140 Pac. 95.

§ 7199.

Double payment for depositions. See note ante, § 3165.

CERTIORARI.

§ 7203.

Appeal. See ante, § 7098.

Review of judge's act in filling vacancy in board of county commissioners. See note ante, § 2883.

This section applies to quasi-judicial bodies as well as to courts and judicial officers strictly so called. *State v. Board of County Commissioners*, 47 Mont. 531, 535, 134 Pac. 291.

A writ of review is the proper remedy for an order made in excess of the jurisdiction of the court; as, where it strikes from the files a default judgment to which the plaintiff is entitled. *State (ex rel. Smotherman) v. District Court*, 50 Mont. 119, 145 Pac. 724.

In proceedings for the organization of a new county, the board of county commissioners is required to act as a quasi-judicial tribunal; hence, certiorari lies to review its action with reference to the creation of new counties. *State v. Board of County Commissioners*, 47 Mont. 531, 535, 134 Pac. 291.

Editorial Notes.

Writ of certiorari when issues and what reviewable upon. 12 Am. Dec. 531.

Legislative acts which cannot be reviewed by certiorari. 18 Am. Dec. 236.

Questions reviewable upon certiorari. 40 Am. St. Rep. 29.

Persons entitled to prosecute writ of certiorari. 103 Am. St. Rep. 110.

Who entitled to file bill of review. Ann. Cas. 1914C, 126.

Exceptions to rule that certiorari will not lie where there is an appeal. 50 L. R. A. 787.

§ 7204.

The affidavit for a writ of review becomes functus officio when the writ is issued. It is not a pleading and its averments cannot be traversed by any other pleading. *State (ex rel. First Trust & Sav. Bank) v. District Court*, 50 Mont. 259, 146 Pac. 539.

§ 7205.

The transcript, required by this section, of the proceedings to be reviewed is the only record which can be made. An answer to the facts stated in the affidavit is not a return. *State (ex rel. First Trust & Sav. Bank) v. District Court*, 50 Mont. 259, 146 Pac. 539.

§ 7209.

The only questions that can be presented for determination to the reviewing court must appear affirmatively from the face of the record. *State (ex rel. First Trust & Sav. Bank) v. District Court*, 50 Mont. 259, 146 Pac. 539.

An order of a justice of the peace discharging an attachment is subject to correction on certiorari where the regularity of the proceedings to obtain the writ was not attacked. *State ex rel. Malin-Yates Co. v. Justice of Peace Court (Mont.)*, 149 Pac. 709.

MANDAMUS.

§ 7213.

Sections 7213-7226 were taken from California. *Bailey v. Edwards*, 47 Mont. 363, 367, 133 Pac. 1095.

§ 7214.

Mandamus to state board of land commissioners. See note ante, § 2161.

Mandamus to reinstate fireman. See note ante, § 3326.

Mandamus lies to compel action, but not to control discretion. *State v. Hindson*, 44 Mont. 429, 436, 120 Pac. 485.

Mandamus lies only to compel the performance of a clear legal duty. *State v. Board of Commissioners*, 49 Mont. 517, 522, 143 Pac. 984.

The character of the duty measures the extent of the relief which can be afforded by mandamus. *State v. Hindson*, 44 Mont. 429, 438, 120 Pac. 485.

The writ of mandamus lies only to compel the performance of a clear legal duty. It will not issue to compel the doing of an idle or useless thing. *State (ex rel. Culbertson Ferry Co.) v. District Court*, 49 Mont. 595, 596, 144 Pac. 159.

When it becomes the sheriff's duty to deliver possession of the property to the plaintiff, the performance of that duty may be compelled by mandamus. *State v. Collins*, 41 Mont. 526, 530, 110 Pac. 526.

When the petition for the removal of a county seat is signed by a majority of the ad valorem taxpayers of the county, all of the signers being qualified voters, it is the ministerial duty of the board of commissioners, under section 2852, ante, to act upon the petition and submit the question of removal to a vote; and, if it declines to act, mandamus lies to compel it to act. *State v. Board of Commissioners*, 42 Mont. 62, 79, 111 Pac. 144.

Editorial Notes.

Writ of mandamus, what is and when allowable. 89 Am. Dec. 728.

Mandamus to control the exercise of discretion. 98 Am. Dec. 375.

To compel performance of a public duty. 28 Am. Rep. 448.

To compel performance of public duty at instance of private person. 7 Am. St. Rep. 484.

To compel letting of contracts to the lowest responsible bidder. 50 Am. St. Rep. 489.

Mandamus against public officers. 98 Am. St. Rep. 863.

To compel payment of municipal debt by custodian of funds. 14 L. R. A. 773.

To compel restoration to office. 19 L. R. A. (N. S.) 49.

To compel transfer of stock by private corporation. 51 Am. Rep. 798.

To compel corporations and their officers to make calls on stockholders. 3 Am. St. Rep. 807.

To private corporations to compel performance of their duties. 37 Am. St. Rep. 317.

Mandamus as remedy to compel private corporation to perform duties arising out of contract. Ann. Cas.

1912C, 890; 8 Ann. Cas. 410; 12 Ann. Cas. 112.

As remedy for correction of errors in justice's court. Ann. Cas. 1913E, 74.

Remedy of accused not brought to speedy trial. Ann. Cas. 1912D, 1272.

Whether court will compel public service corporation to perform obligations of franchise. Ann. Cas. 1914A, 1244.

Right of private person to mandamus to enforce performance of duty by court or magistrate. Ann. Cas. 1912A, 1118; 9 Ann. Cas. 1074.

§ 7215.

Mandamus is the proper remedy to compel the district court to dismiss a case against a defaulted defendant where a long time has elapsed without the default having been demanded or entered. *State v. District Court*, 37 Mont. 298, 305, 96 Pac. 337.

Mandamus is the proper remedy to require the trustees of a school district to determine the location of a site for a schoolhouse, where they arbitrarily remove a school to a site selected by themselves, without consulting the electors. *State v. Lyons*, 37 Mont. 354, 365, 96 Pac. 922.

A resident and taxpayer of the school district is a party beneficially interested and entitled in such case to make the application. *State v. Lyons*, 37 Mont. 354, 365, 96 Pac. 922.

The writ of mandate will not issue where the remedy by appeal is plain, speedy, and adequate; as, to review a judgment in unlawful detainer. *State v. District Court*, 47 Mont. 547, 133 Pac. 547.

The writ of mandate will not issue from the supreme court to correct a judgment entered by the district court. *State v. District Court*, 47 Mont. 547, 548, 133 Pac. 679.

Editorial Notes.

Who is real party in interest by whom mandamus proceedings must be instituted. 64 L. R. A. 622.

Who may join as relators in mandamus proceedings. Ann. Cas. 1912B, 420.

Necessary parties to proceedings in mandamus, who are. 105 Am. St. Rep. 122.

§ 7216.

This section contemplates that, after the service of a peremptory writ of mandate, a return shall be made by the party upon whom the writ is served, though it is not specified what the return shall contain. *State v. District Court*, 41 Mont. 369, 371, 109 Pac. 434.

The return to a peremptory writ of mandate should contain a certificate of compliance, unless something impossible or unlawful is commanded, or such a change of conditions has taken place as to make compliance improper,—in which case the facts should be stated. *State v. District Court*, 41 Mont. 369, 372, 109 Pac. 434.

Editorial Notes.

Necessity that peremptory writ of mandamus conform to alternative writ. *Ann. Cas.* 1912D, 671.

§ 7218.

This section and section 7225, post, show that a proceeding in mandamus is not regarded by the legislative assembly as a civil action. *Bailey v. Edwards*, 47 Mont. 363, 371, 133 Pac. 1095.

§ 7219.

Any and all of the questions arising in a mandamus proceeding, whether of law

or of fact, may be tried by the court without a jury, with or without a reference. *Bailey v. Edwards*, 47 Mont. 363, 372, 133 Pac. 1095.

§ 7224.

The damages allowable in mandamus proceedings are such damages as are incidental to the proceedings themselves, and not those arising out of the transaction which the proceedings were invoked to redress. *Bailey v. Edwards*, 47 Mont. 363, 373, 133 Pac. 1095.

§ 7225.

Proceedings in mandamus not a civil action. See note ante, § 7218.

Editorial Notes.

Judgment, in mandamus, as a bar to all issues which have been litigated therein. *Ann. Cas.* 1913B, 541.

PROHIBITION.

§ 7228.

The existence of a remedy by appeal is not of itself a bar to a writ of prohibition, unless such remedy is plain, speedy and adequate; and it is neither speedy nor adequate if its slowness is likely to produce immediate injury or mischief. *State (ex rel. Marshall) v. District Court*, 50 Mont. 289, 146 Pac. 743.

Prohibition will not issue to prevent further prosecution for the violation of a city ordinance claimed to be void. The accused has, either by the writ of habeas corpus or by appeal, a plain, speedy and

adequate remedy in the ordinary course of law. *State v. Booher*, 43 Mont. 569, 571, 118 Pac. 271.

Editorial Notes.

Writ of prohibition, when lies. 12 Am. Dec. 604; 18 Am. Dec. 238; 111 Am. St. Rep. 929.

Prohibition as process for review and correction of errors. *Ann. Cas.* 1913D, 593.

Prohibition to restrain ministerial acts. 1 *Ann. Cas.* 713.

ELECTION CONTEST.

§ 7234.

Illegal votes as ground of contest. See note post, § 7239.

The malconduct on the part of election officers, as specified in the first subdivision of this section, is a wholly distinct ground of contest from that of the reception of illegal votes referred to in the fourth subdivision of this section. *Stephens v. Nacey*, 49 Mont. 230, 245, 141 Pac. 649.

The proceeding for contesting an election is classed as a special proceeding. It partakes of the nature of a civil action, but it is not in fact such an action. It is altogether statutory, and is embodied in sections 7234-7249. *Curry v. McCaffery*, 47 Mont. 191, 194, 131 Pac. 673.

That the contestee's name was not rightfully on the official ballot, is not a ground of contest. *Stephens v. Nacey*, 47 Mont. 479, 485, 133 Pac. 479.

The malconduct of election officers is a wholly distinct ground of contest from that of the reception of illegal votes. *Stephens v. Nacey*, 49 Mont. 230, 245, 141 Pac. 649.

This section permits only the contest of an election to office. *Cadle v. Town of Baker (Mont.)*, 149 Pac. 960.

Editorial Notes.

Statutory remedy for contest of election as exclusive. *Ann. Cas.* 1913E, 982.

§ 7235.

Defect in form of returns to be disregarded. See ante, § 606.

Want of form not to vitiate. See ante, § 520.

What returns must be rejected. See ante, § 591.

Editorial Notes.

Irregularities which will avoid elections. 90 Am. St. Rep. 46.

Validity of election conducted by less than required number of officers. Ann. Cas. 1912D, 149.

§ 7237.

Cited in *Stephens v. Nacey*, 47 Mont. 479, 486, 133 Pac. 361.

§ 7238.

When a statement of contest has been filed within the time limited, the court has jurisdiction of the subject matter of that particular contest, and the jurisdiction thus obtained is not ousted by the neglect of the judge to thereupon order a special session or term of the district court, as provided in section 7241, post; or, by error committed in failing to convene court "at the time and place designated," as required by section 7244, post. These two last-mentioned sections are not mandatory, but simply directory. *Stephens v. Nacey*, 47 Mont. 479, 483, 133 Pac. 361.

§ 7239.

Distinction between grounds of contest. See note ante, § 7234.

When the reception of illegal votes is stated as the ground of contest, it is incumbent upon the contestant to furnish to the contestee, at least three days before the trial, a written list of the number of votes he deems illegal; otherwise, proof of the specific votes cannot be made. *Stephens v. Nacey*, 49 Mont. 230, 245, 141 Pac. 649.

When the reception of illegal votes is stated as the ground of contest of an election, though the malconduct charged is the receiving of votes cast in the aggregate, and not in the receiving of any specific number of illegal votes, it is incumbent upon the contestant to furnish to the contestee, at least three days before the trial, a written list of the number of votes he deems illegal. If he fails to do so, he cannot claim that any number of the votes cast were illegal. *Stephens v. Nacey*, 49 Mont. 230, 245, 141 Pac. 649.

§ 7241.

Section is directory only. See note ante, § 7238.

The special session or term is not limited to twenty days, or to any period of time, by either the Constitution or the

statute. *Curry v. McCaffery*, 47 Mont. 191, 199, 201, 131 Pac. 673.

§ 7242.

This section is directory merely. *Curry v. McCaffery*, 47 Mont. 191, 200, 131 Pac. 673; citing *O'Dowd v. Superior Court*, 158 Cal. 537, 111 Pac. 751, construing an identical section from the code of California.

§ 7244.

Section is directory only. See note ante, § 7238.

To hold the provisions of this section and of section 7241, ante, mandatory, would, in view of section 6315, ante, giving to each party to a proceeding the right to disqualify judges by filing disqualifying affidavits, defeat the very purpose of the statute concerning election contests. If the terms of this section (7244) were to be carried out strictly according to the language employed and not otherwise, the contestee, by disqualifying the presiding judge on the eve of the day set for the hearing could, in practically every instance, prevent a trial "at the time and place designated" in the order calling the special term and thereby oust the court of jurisdiction. *Stephens v. Nacey*, 47 Mont. 479, 483, 133 Pac. 361.

This section does not contain any restriction upon the power of the court, of its own motion, to adjourn the hearing of an election contest before the trial actually commences; hence, if such an adjournment is taken, for a period of time exceeding twenty days from the day originally set for the hearing, the court errs in dismissing the contest on the ground that such adjournment deprived it of jurisdiction. *Curry v. McCaffery*, 47 Mont. 191, 196, 131 Pac. 673.

A court of record has authority, of its own motion, and in the absence of a statute, to adjourn the hearing of a matter pending before it; but this power may be restricted by statute, as in section 8005, post. *Curry v. McCaffery*, 47 Mont. 191, 201, 131 Pac. 673.

§ 7248.

As this section makes no provision for a record by which the appeal can be presented to the supreme court, it is proper, under section 6329, ante, for the contestant, in an election contest, to file a record that is an appropriate one in an ordinary civil action. *Curry v. McCaffery*, 47 Mont. 191, 194, 131 Pac. 673.

SUBMISSION OF CONTROVERSY.**§ 7254.**

Dismissal of appeal, for collusion. See note ante, § 7116.

Applied, in determining the question whether a city has the right and power to compel a light and railway company to light its railway tracks within the cor-

porate limits of the city, without cost or expense to the city. *Helena etc. Ry. Co. v. City of Helena*, 47 Mont. 18, 27, 130 Pac. 446.

Applied to a controversy over the right to office of chief of police and night policeman. *Grush v. Bishop*, 46 Mont. 97, 98, 126 Pac. 619.

The submission of agreed cases is to be encouraged where they involve real controversies. *Carlson v. City of Helena*, 38 Mont. 581, 586, 101 Pac. 163.

The bringing of actions upon feigned issues, for the purpose merely of enabling the parties to ascertain what the law is,

is not to be encouraged. *Carlson v. City of Helena*, 38 Mont. 581, 589, 101 Pac. 163.

A cause, having for its purpose the obtaining of a decree to quiet the title to land, may be submitted, without pleadings, under an agreed statement of facts. *Lockey v. City of Bozeman*, 42 Mont. 387, 390, 113 Pac. 286.

Agreed statement of facts presented for the purpose of determining the constitutionality of chapter 64, of the laws of 1909, providing for state accident insurance and workmen's compensation for personal injuries sustained by coal mine employees in the course of their employment. *Cunningham v. Northwestern Imp. Co.*, 44 Mont. 180, 201, 119 Pac. 554.

UNLAWFUL DETAINER.

§ 7271.

Complaint. See note post, § 7276.

The provision in the fourth subdivision of this section, against an assignment of the lease without the lessor's consent, is for the benefit of the lessor; but if, in case of such assignment, he fails to avail himself of the privilege of declaring the lease ended, he, by his inaction, waives the breach of the condition. *Winslow v. Dundom*, 46 Mont. 71, 82, 125 Pac. 136.

In an action for unlawful detainer, brought under the first subdivision of this section, the complaint should allege, specifically, that the holding over is without the permission of the plaintiff, or state facts sufficient to furnish a clear inference to that effect. *Centennial Brewing Co. v. Rouleau*, 49 Mont. 490, 499, 143 Pac. 969.

In an action for unlawful detainer, brought under the first subdivision of this section, it is not necessary for the complaint to allege that the plaintiff was en-

titled to possession at the time of commencing his action, or that he gave notice, or demanded possession, before that time. *Centennial Brewing Co. v. Rouleau*, 49 Mont. 490, 499, 143 Pac. 969.

Editorial Notes.

Keeping out of possession person entitled thereto, by fear of personal violence, after peaceable entry, as giving right of action. *Ann. Cas.* 1912D, 875.

§ 7276.

Essentials of complaint. See note ante, § 7271.

§ 7283.

The court has no discretion in rendering judgment under this section, but must follow its mandate. *Centennial Brewing Co. v. Rouleau*, 49 Mont. 490, 505, 143 Pac. 969.

MECHANICS' LIENS.

§ 7290.

Interests affected. See note post, § 7293.

Lien extends to whole claim. See note post, § 7293.

This section is the "fountain-head" of all mechanics' liens, and, under it, mining claims and railroads are, as possible subjects for such liens, in *pari materia*. *Dean v. Stewart*, 49 Mont. 506, 515, 143 Pac. 966.

The lien is given primarily upon the building, structure or other improvement, and extends to the land incidentally. *Stritzel-Spaberg Lumber Co. v. Edwards*, 50 Mont. 49, 144 Pac. 772.

The lien on a building cannot be denied because of the fact that some injury may result to the realty from the removal of

the building. The statute contemplates removal, whether injury does or does not result. *Stritzel-Spaberg Lumber Co. v. Edwards*, 50 Mont. 49, 144 Pac. 772.

The mechanic's lien statute, sections 7290-7301, is materially different from that concerning loggers' liens, and cases upon the former are inapplicable to the latter. *Lane v. Lane Potter Lumber Co.*, 40 Mont. 541, 550, 107 Pac. 898.

One who does work or labor upon, or furnishes material for, a mining claim is entitled to a mechanic's lien therefor, on the claim. *McIntyre v. MacGinniss*, 41 Mont. 87, 95, 137 Am. St. Rep. 701, 108 Pac. 353.

Editorial Notes.

Estates and interests affected by mechanics' liens. 45 Am. Dec. 678.

Buildings and other property subject to mechanics' liens. 78 Am. Dec. 694.

Public buildings, when subjects of mechanics' liens. 27 Am. Rep. 83; 35 L. R. A. 141; 20 L. R. A. (N. S.) 261; 41 L. R. A. (N. S.) 315.

Public school building as subject to mechanic's lien. Ann. Cas. 1913A, 762; 17 Ann. Cas. 131.

Nature of improvement for which mechanic's lien may exist. Ann. Cas. 1912B, 5.

Mechanics' liens for materials furnished to be used, but not in fact used. 64 Am. Dec. 678; 31 L. R. A. (N. S.) 749.

Lien of materialmen. 79 Am. Dec. 268.

"Laborer," "workman," "servant," who is within the meaning of statutes relating to mechanics' liens. 32 Am. Rep. 264.

Who is "laborer" within statute giving lien to laborers. Ann. Cas. 1913B, 138.

Necessity that materials for which mechanic's lien is claimed be incorporated in structure. Ann. Cas. 1913B, 502; 13 Ann. Cas. 13; 19 Ann. Cas. 588; 42 L. R. A. (N. S.) 354.

Tools and appliances used for construction work as materials for which mechanic's lien may be had. Ann. Cas. 1912B, 227.

§ 7291.

Sufficiency of notice. See note post, § 7293.

Where machinery was shipped from New York on June 6th, and reached its destination in this state on June 18th, and a claim therefor was filed on September 14th, it was held that, although the materials had been "furnished," the claim for a lien was not filed in time to comply with the law. *McEwen v. Union Bank etc. Co.*, 35 Mont. 470, 90 Pac. 359.

A person who desires to file a mechanic's lien need not classify the character of work done, or set out the items of it in the account filed with the notice; all that is required is an honest statement from which it may be understood what amount is claimed. *McIntyre v. MacGinniss*, 41 Mont. 87, 98, 137 Am. St. Rep. 701, 108 Pac. 353.

Though a claimant's notice of lien fails to state under oath, as required by this section, that it contains "a just and true account of the amount due him after allowing all credits," it is sufficient where it sets forth the contract between the parties, the amount of work done, and the materials furnished, in considerable detail; where it gives the total amount of

credits or moneys paid thereon, and states the balance claimed to be due; where it states "that items are correct"; where it is signed by the claimant and where it bears a jurat, reciting that it was subscribed and sworn to before a designated notary public. *Mills v. Olsen*, 43 Mont. 129, 133, 115 Pac. 33.

A verified account to a lien statement, in the matter of excavating and constructing a cistern, is held to constitute a substantial compliance with the requirements of this section for the filing, with the county clerk, of an account of the amount due after allowing all credits, etc. *Neuman v. Grant*, 36 Mont. 81, 92 Pac. 43.

A mechanic's lien is sufficient, though it is in the form of an affidavit, with an itemized statement attached, instead of consisting of a statement of the account and a description of the property, followed by an affidavit. *Wertz v. Lamb*, 43 Mont. 477, 482, 117 Pac. 89.

A notice of lien, stating that there is a certain sum due the lienor, "after allowing just credits and offsets," instead of using the words, "after allowing all" credits, is sufficient. *Wertz v. Lamb*, 43 Mont. 477, 481, 117 Pac. 89.

In an action to foreclose a mechanic's lien, the plaintiff must allege and prove that he has complied with the requirements of this section; but, if the lien is sufficient, a reference to it in the complaint to which it is attached, is likewise sufficient for the purpose of showing compliance with the statutory provisions. *Wertz v. Lamb*, 43 Mont. 477, 481, 117 Pac. 89.

A notice of a lien for clearing land must contain such a description of the land sought to be charged that it can be identified; if it is impossible to identify the land from such notice, the lien is invalid. *Ivanhoff v. Teale*, 47 Mont. 115, 118, 130 Pac. 972.

The notice of lien for material and labor furnished in the construction of a railway roadbed is sufficient, notwithstanding errors of description therein, if the property can be identified by the description given. *Dean v. Stewart*, 49 Mont. 506, 514, 143 Pac. 966.

Editorial Notes.

Time to file mechanic's lien as computed from date of actual completion or date of acceptance of work. Ann. Cas. 1912A, 908.

Time for filing mechanic's lien as extended by substituting new materials for those already furnished. Ann. Cas. 1912C, 217.

Sufficiency of statement or notice of mechanic's lien naming in caption but not in body of statement or notice owner or person against whose interest lien is claimed. 20 Ann. Cas. 1162.

§ 7293.

- Sufficiency of notice. See note ante, § 7291.

The provision in this section, limiting the operation of a mechanic's lien, does not apply to mining claims. A lien upon such property extends to the whole claim. *McIntyre v. MacGinniss*, 41 Mont. 87, 96, 137 Am. St. Rep. 701, 108 Pac. 353.

The limitation of one acre in this section does not apply to mining claims; the lien upon such property extends to the whole claim. *Dean v. Stewart*, 49 Mont. 506, 515, 143 Pac. 966.

A lien for materials and labor furnished in the construction of a railway roadbed is not defeated by the fact that the description in the notice of lien covered more than the limit of one acre fixed by

this section. The lien is given primarily upon the structure, and a misdescription does not defeat the lien if the structure can be identified. *Dean v. Stewart*, 49 Mont. 506, 515, 143 Pac. 966.

Editorial Notes.

When may include property in addition to that upon which work was performed. 65 Am. St. Rep. 165.

§ 7294.

If lessees of a mining claim have work done thereon, and pay for it in part, they are personally answerable for the amount unpaid, whether they are technically partners or not. *McIntyre v. MacGinniss*, 41 Mont. 87, 99, 137 Am. St. Rep. 701, 108 Pac. 353.

LIEN FOR WAGES.

§ 7302a. Attorney Fee as Costs.

In an action to establish a claim for salary or wages under the provisions of Part III, Title IV, Chapter 3, of this code, the court must allow as costs a reasonable attorney's fee to each claimant who establishes his claim as provided in section 7302 of the Revised Codes of Montana, 1907, or to the defendant if such claim be not established. [Approved February 18, 1915; Laws 1915, c. 17, p. 28.]

CONTEMPT.

§ 7309.

Mayor's contempt in refusing to reinstate policemen. See note ante, § 3305.

Where one pays out money in good faith to meet the just obligation of creditors, and thereby incapacitates himself to obey an order of court, his failure to obey the order is not contempt. *State v. District Court*, 37 Mont. 488, 97 Pac. 841.

Where a person, without a license to practice law, employs all the customary methods to advertise himself as an attorney and counselor at law, he is guilty of contempt, under the sixth subdivision of this section. In *re Bailey*, 50 Mont. 365, 146 Pac. 1101.

An attorney who enters the judge's chambers without leave and takes a discarded memorandum of proceedings from the waste-basket, indorses it and files it with the clerk, is guilty of contempt. *State ex rel. Coleman v. District Court (Mont.)*, 149 Pac. 973.

Editorial Notes.

Contempt of court, constructive, by publications concerning pending cases. 2 Am. Dec. 391; Ann. Cas. 1912B, 542; 68 L. R. A. 261.

Pendency of cause as essential element of contempt by newspaper publication. 3 Ann. Cas. 763; 18 Ann. Cas. 664.

Attempt to deceive court as contempt. Ann. Cas. 1912B, 1310.

Fighting in court as contempt. Ann. Cas. 1912A, 581.

Criticism of grand jury as contempt of court. Ann. Cas. 1912A, 165.

Being drunk in presence of court as contempt. Ann. Cas. 1913B, 282.

Obstructing or delaying service or execution of process as contempt. Ann. Cas. 1913A, 909.

Removal or destruction of subject matter of litigation pending appeal as contempt of appellate court. Ann. Cas. 1912A, 516.

§ 7310.

Neither a contempt proceeding nor a writ of possession is a proper remedy to restore the plaintiff in an ejectment suit, to the possession of premises adjudged to belong to him and from which he alleges he was ousted by the successor in interest of the defendant in a preceding action, under the assertion of a right not adjudicated theretofore. *Baker v. Butte Water Co.*, 40 Mont. 583, 586, 135 Am. St. Rep. 642, 107 Pac. 819.

Editorial Notes.

Remedies of plaintiff, who is dispossessed after being put in possession under a judgment in ejectment 135 Am. St. Rep. 646.

§ 7311.

An attempt corruptly to influence a member of a jury panel amounts to an unlawful interference with the proceedings of the court, and is punishable as a contempt, irrespective of whether the juror has been actually sworn to try a cause. *State v. District Court*, 37 Mont. 191, 15 Ann. Cas. 743, 95 Pac. 593.

In the absence of some requirement of the statute prescribing the form in which a charge for contempt must be presented, a substantial and general statement will give the court jurisdiction to proceed. The affidavit need not be drawn in strict conformity with the rules of criminal pleading, as in case of informations or indictments; but it is generally necessary, however, to allege, in some way, the intent with which the unlawful act has been committed; yet, where it appears as a conclusive inference from facts stated in the affidavits that the contemner intended corruptly to influence jurors, it is not necessary to specially allege the intent with which the act was done. *State v. District Court*, 37 Mont. 191, 196, 15 Ann. Cas. 743, 95 Pac. 593.

A constructive contempt can be punished only after a hearing upon an affidavit showing the facts constituting the contempt, and the answer thereto by the party accused, as provided in section 7317, post. *Ex parte Mettler*, 50 Mont. 299, 146 Pac. 747.

If an attorney is adjudged guilty of a contempt committed in the presence of the court, the order of commitment must recite the facts alleged to have constituted the contempt, so that the judgment of conviction may be examined and reviewed; unless it does so, no review is possible, and the order cannot stand. *Ex parte Mettler*, 50 Mont. 299, 146 Pac. 747.

§ 7317.

Hearing and punishment. See note ante, § 7311.

§ 7318.

Contempt proceedings are *sui generis* and complete in themselves, and cannot be changed by construction into actions for the wrongful conversion of personal property or for the wrongful occupation of real property. Consequently, statutes fixing the measure of damages in such actions have no application. *Dunlavey v. Doggett*, 38 Mont. 204, 209, 99 Pac. 436.

Contempt proceedings do not furnish a remedy available to the plaintiff for the redress or prevention of a private wrong. The object to be attained is vindication of the dignity of the authority of the court, and not indemnity for the plaintiff or any judgment in his favor. *Dunlavey v. Doggett*, 38 Mont. 204, 210, 99 Pac. 436.

When it has been decreed that a person is entitled to certain water rights, and he institutes contempt proceedings for the violation of a restraining order included in such decree, and incurs attorney's fees, witness fees, court costs, and other expenses necessarily incident to a lawsuit, and afterward brings an action against the contemner for damages proximately caused by his disobedience of the order, such items, in the absence of a statute on the subject, are not recoverable as damages. *Dunlavey v. Doggett*, 38 Mont. 204, 210, 99 Pac. 436.

No additional penalty can be imposed. *Dunlavey v. Doggett*, 38 Mont. 204, 208, 99 Pac. 436.

An attorney found guilty of contempt was properly subject to punishment by fine and imprisonment in the county jail until the fine was paid. *State ex rel. Coleman v. District Court (Mont.)*, 149 Pac. 973.

§ 7319.

Inability to render obedience to an order of court is a good defense to a charge of contempt for its violation, unless it appears that the person charged has voluntarily and contumaciously brought the disability upon himself. *State v. District Court*, 37 Mont. 488, 97 Pac. 841.

DISSOLUTION OF CORPORATION.**§ 7324.**

Individual stockholder as voting unit. See note ante, § 3887.

Editorial Notes.

Dissolution, effect of. 12 Am. Dec. 239; 7 Am. St. Rep. 717; 69 L. R. A. 124.

Dissolution of corporations, effect of upon debts and pending actions. 40 Am. Dec. 737.

Dissolution by court of foreign corporation. Ann. Cas. 1913E, 459.

Right of majority of stockholders to dissolve going business corporation against protest of minority. Ann. Cas. 1913A, 375.

EMINENT DOMAIN.**§ 7331.**

Rule of necessity in eminent domain. See note post, § 7334.

Use of street railroad for hauling freight, as a public use. See note ante, § 3259.

This section furnishes no authority for the exercise of the right of eminent domain by a foreign corporation. *Helena Power etc. Co. v. Spratt*, 35 Mont. 108, 130, 10 Ann. Cas. 1055, 8 L. R. A. (N. S.) 567, 88 Pac. 773.

Land may be taken under the power of eminent domain, for the purpose of flooding it in the construction of a dam for generating electric power to be sold to the public, and also to be utilized in pumping water upon arid lands. *Helena Power etc. Co. v. Spratt*, 35 Mont. 108, 125, 10 Ann. Cas. 1055, 8 L. R. A. (N. S.) 567, 88 Pac. 773.

Editorial Notes.

Public use, taking property for, what is a. 16 Am. St. Rep. 610; Ann. Cas. 1912D, 1002; 2 Ann. Cas. 50; 14 Ann. Cas. 903.

Public use, power of the legislature to determine what is a. 88 Am. St. Rep. 926; 22 L. R. A. (N. S.) 50.

Uses for which power of eminent domain cannot be exercised. 102 Am. St. Rep. 809.

Right of railroad company to condemn land for spur track to private establishment. Ann. Cas. 1912D, 234.

Right of county to exercise power of eminent domain. Ann. Cas. 1913E, 1079.

Irrigation as public use or benefit. 1 Ann. Cas. 304.

Drainage of land as public use. 20 Ann. Cas. 272; 49 L. R. A. 781; 1 L. R. A. (N. S.) 208; 22 L. R. A. (N. S.) 163.

Roads as public use. 22 L. R. A. (N. S.) 99.

Combination of public and private uses. 21 L. R. A. (N. S.) 539.

appropriate private property to forward the public service; but they must, nevertheless, be interpreted in the light of this section 7334, and the rule of necessity must, in each instance, determine the right to take. *Northern Pac. Ry. Co. v. McAdow*, 44 Mont. 547, 555, 121 Pac. 473.

"Necessary" does not mean an absolute or indispensable necessity, but one reasonable, requisite, and proper for the accomplishment of the end in view, under the peculiar circumstances of the case. *Northern Pac. Ry. Co. v. McAdow*, 44 Mont. 547, 554, 121 Pac. 473.

A beneficial use of the water flowing in the streams of the state is a public use; but it may be appropriated to a more necessary public use, and it is not necessary that the new public use should, in all cases, be a different public use. It does not follow, however, that a city can acquire the exclusive right to the use of the water in a particular stream; it must first be shown that the use for which it is sought is a more necessary use, and the city must then be able financially to make compensation to the person or persons entitled to the present use. *Carlson v. City of Helena*, 39 Mont. 82, 105, 17 Ann. Cas. 1233, 102 Pac. 39.

An appeal from the award in condemnation proceedings presents to the district court only the question of the amount of damages, and the judgment should determine that question and nothing more. *Great Northern Ry. Co. v. Benjamin* (Mont.), 149 Pac. 963.

§ 7333.

What estates may be acquired by condemnation. See ante, § 7332.

Lands granted to the state for common school purposes cannot be taken under condemnation proceedings. Congress commanded that sections 16 and 36 in each township should be sold at public sale, and the framers of the state Constitution expressly agreed, for the state, not to dispose of them, except in the manner prescribed, without the consent of the United States. *State v. District Court*, 42 Mont. 105, 116, 112 Pac. 706.

Lands belonging to the state, except as otherwise indicated in the second subdivision of this section, may be taken by the exercise of the power of eminent domain, and the state may properly be made a party to the action; in other words, the state has expressly consented to be sued under such circumstances. *State v. District Court*, 42 Mont. 105, 113, 112 Pac. 706.

§ 7334.

Sections 3895, 4271, 4275 and 7331 ante, are extremely liberal in bestowing upon railroad corporations the power to

§ 7340.

Subdivision 4 applied. *Spratt v. Helena Power etc. Co.*, 37 Mont. 60, 90, 94 Pac. 631.

§ 7341.

If commissioners appointed to assess damages in eminent domain proceedings do not perform their whole duty, the injured party may appeal, or move to set aside their report. Failing to invoke either of these remedies, he may not thereafter complain that his property was taken without due process of law. *Spratt v. Helena Power etc. Co.*, 37 Mont. 60, 94, 94 Pac. 631.

§ 7342.

In condemnation proceedings, where an appeal has been taken to the district court from the award made by the commissioners, and the jury in the district court renders a verdict for damages greater than the amount awarded by the commissioners appointed, and judgment is entered in favor of the party entitled thereto for the difference, it is proper for the court to add interest from the date of the order admitting the plaintiff company

into possession of the property, there having been no disputed question of fact relating to interest for the jury to pass upon. Interest is allowed by the statute, and, under such circumstances, is a matter for the court to deal with. *Helena Power Trans. Co. v. Spratt*, 40 Mont. 254, 256, 106 Pac. 5.

§ 7344.

If commissioners appointed to assess damages in eminent domain proceedings do not perform their whole duty, the injured party may appeal. *Spratt v. Helena Power etc. Co.*, 37 Mont. 60, 94, 94 Pac. 631.

§ 7347.

A trustee, as holder of the legal title to land condemned by a railroad company, is prima facie entitled to the money ordered paid to him. *Forbis v. Cannon*, 35 Mont. 424, 90 Pac. 161.

Editorial Notes.

Word "owner" as including tenant for years. *Ann. Cas.* 1912A, 317.

Right to condemnation money as between heir or devisee and executor or administrator. *Ann. Cas.* 1912C, 595.

Right of vendee under contract of sale of land to compensation where land is condemned. *Ann. Cas.* 1912A, 456.

§ 7348.

The final order of condemnation follows the payment of an award and cannot be entered in advance without infringing the constitutional provision that private property shall not be taken without just com-

pensation having been first made to or paid into court for, the owner. *Great Northern Ry. Co. v. Benjamin* (Mont.), 149 Pac. 968.

§ 7349.

Interest from time that plaintiff is put into possession. See note ante, § 7342.

It does not necessarily follow that because one is a trespasser he may not invoke the power of eminent domain. *Spratt v. Helena Power etc. Co.*, 37 Mont. 60, 93, 94 Pac. 631.

After the report of the commissioners has been filed and the damages paid into court for the owner of the property, the court may properly permit the plaintiff to continue in possession of the property, which possession had theretofore been obtained under an order in a like proceeding, the judgment in which had been reversed on appeal. *Spratt v. Helena Power etc. Co.*, 37 Mont. 60, 95, 94 Pac. 631.

A recital in condemnation proceedings that plaintiff have judgment and execution against defendant for any sum theretofore paid by plaintiff to defendant in accordance with the award, which award was appealed from, is improper, as the statute gives an ample remedy if plaintiff is entitled to recover any amount from defendant. *Great Northern Ry. Co. v. Benjamin* (Mont.), 149 Pac. 968.

§ 7351.

In case commissioners to assess damages in eminent domain proceedings do not perform their whole duty, the injured party may move to set aside their report. *Spratt v. Helena Power etc. Co.*, 37 Mont. 94, 94 Pac. 631.

ESCHEAT.

§ 7359. Claim to Escheated Estate—Filing and Determination.

Within twenty years after judgment for any proceedings had under this title, a person, not a party or privy to such proceedings, may file a petition in the district court of the county in which the seat of government is located, showing his claim or right to the property or the proceeds thereof. A copy of such petition must be served on the Attorney General at least twenty days before the hearing of the petition, who must answer the same; and the court must thereupon try the issue as issues are tried in civil actions, and if it be determined that such person is entitled to the property or the proceeds thereof, it must order the property, if it has not been sold, to be delivered to him, or, if it has been sold and the proceeds paid into the state treasury, then it must order the auditor to draw his warrant on the treasury for the payment of the same, but without interest or cost to the state, a copy of which order, under the seal of the court, shall be a sufficient voucher for drawing such warrant. All persons who fail to appear and file their petitions within the time limited are forever barred;

saving, however, to infants and persons of unsound mind or persons beyond the limits of the United States, the right to appear and file their petitions at any time within the time limited, or five years after their respective disabilities cease; provided, however, that any person claiming the proceeds of the sale of escheated property or property alleged to have escheated, which have been paid into the treasury of the state of Montana, at any time before the first day of July, 1895, shall have one year after the passage of this act in which to file his petition for the recovery of such proceeds, as hereinabove provided. [Amendment approved March 21, 1913; Laws 1913, p. 483.]

CHANGE OF NAME.

§ 7362. Notice of Hearing—Publishing and Posting.

When a petition setting out the matters contained in section 7361 is filed, the court or judge may appoint a time for hearing the said petition. Notice of the time and place of hearing the said petition must be published for four successive weeks in some newspaper published in the county, if a newspaper be printed therein, but if no newspaper be printed in the county, a copy of such notice must be posted in at least three public places in the county for a like period. [Amendment approved February 3, 1911; Laws 1911, p. 11.]

§ 7363. Hearing of Application.

On the day set for the hearing of said petition or at any time to which the hearing is continued or postponed, due proof of the publication, or posting, of the required notice as set out in section 7362 being made, such application must be heard. At any time before such hearing, objections may be filed by any person who can in such objections, show to the court or judge good reasons against such change of name. On the hearing the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the application, and may make an order changing the name or dismissing the applications, as to the court or judge may seem right and proper. [Amendment approved February 3, 1911; Laws 1911, p. 11.]

ARBITRATION.

§ 7365.

If parties to a contract of fire insurance agree after the property has been destroyed, to submit the amount of loss to arbitration, the award fixes the amount of loss sustained and is binding upon both parties; hence, the insured cannot maintain an action upon the policy and have a readjustment of the loss, without first having the award set aside. *Solem v. Connecticut Fire Ins. Co.*, 41 Mont. 351, 353, 109 Pac. 432.

Editorial Notes.

Agreements to submit to arbitration. 14 Am. Dec. 296; 29 Am. Rep. 602; 2 Am. St. Rep. 566; 15 L. R. A. 142.
Who may submit to arbitration when acting for another. 30 Am. Dec. 626.
Submission to arbitration as discontinuance of pending case. Ann. Cas. 1912A, 1263.
Enforcement of agreements to arbitrate. 1 Ann. Cas. 21.

WILL CONTEST.

§ 7397.

Parties in a guardianship proceeding. See note post, § 7764.

Presumption as to sanity. See note post, § 8113.

Any heir at law of a testator is in a position to question the validity of a purported will, which revokes all former ones. In *re Hobbins' Estate*, 41 Mont. 39, 47, 108 Pac. 7.

The one who contests a will has the burden of proof. *In re Williams' Will* (Williams v. Davis), 50 Mont. 142, 145 Pac. 957.

One who contests the probate of a will occupies the position of a plaintiff, and, under section 7972, post, he has the affirmative of the issue and must prove it or be defeated. *In re Murphy's Estate*, 43 Mont. 353, 373, Ann. Cas. 1912C, 380, 116 Pac. 1004.

The validity of a will that provides for the payment of debts and that appoints an executor, but which disposes of the bulk of the estate to charity, in violation of sections 4761 and 4762, ante, cannot be raised in a proceeding for the probate of the will; it can be determined only after the admission of the will to probate. *In re Hobbins' Estate*, 41 Mont. 39, 50, 108, Pac. 7.

In a will contest, the supreme court is concluded by findings based upon conflicting evidence. *In re Noyes' Estate*, 40 Mont. 178, 188, 105 Pac. 1013.

EXECUTORS AND ADMINISTRATORS.

§ 7432.

Violation of law in appointing special administrator. See note post, § 7472.

Waiver of right to administer. See note post, § 7450.

A surviving husband or wife is entitled to letters of administration, to the exclusion of any other person, where no ground of incompetency enumerated in section 7436, post, is shown. *State v. District Court*, 49 Mont. 146, 148, 140 Pac. 732.

No condition or limitation is imposed upon the widow's choice of an administrator, except that the nominee be competent; and the fact that she asserts claim to property which the other heirs contend belong to the estate does not render her or her nominee incompetent. *In re Blackburn's Estate*, 48 Mont. 179, 188, 137 Pac. 381.

The widow, whether competent or not, still has her right of nomination. *In re Blackburn's Estate*, 48 Mont. 179, 195, 137 Pac. 381.

The right of a surviving husband or wife to administer or to name the administrator is absolute, but a request by any other relative named in Revised Codes, section 7447, is addressed to the sound discretion of the court. *In re Infelise's Estate* (Mont.), 149 Pac. 365.

Editorial Notes.

Who may be executors or administrators. 54 Am. Dec. 518; Ann. Cas. 1913B, 1162.

Validity of grants of administration. 79 Am. Dec. 65; 81 Am. St. Rep. 535.

Editorial Notes.

Right to jury trial in will contest. Ann. Cas. 1914B, 557.

§ 7399.

Contesting probate of will made in violation of sections 4761 and 4762, ante. See note ante, § 7397.

§ 7400.

This section means that the subscribing witnesses, if present in the county, must first be called and examined. Other testimony cannot be received to the exclusion of theirs; but, if one of them is not present, and his deposition does not make him so, another person who witnessed the will may testify to its execution, though he was not a subscribing witness. *In re Williams' Will* (Williams v. Davis), 50 Mont. 142, 145 Pac. 957.

§ 7402.

This section shows how the will is admitted to probate. *In re Hobbins' Estate*, 41 Mont. 39, 49, 108 Pac. 7.

Widow's right to administer on estate of her deceased husband. 93 Am. Dec. 685.

Nonresidents, right of to act as executors or administrators. 113 Am. St. Rep. 562; 1 L. R. A. (N. S.) 341.

Right of alien or nonresident to act as executor or administrator. Ann. Cas. 1912A, 747; 3 Ann. Cas. 988.

Right of person entitled to administer to nominate administrator to exclusion of person next entitled. Ann. Cas. 1914A, 1014.

§ 7436.

Right to appointment as special administrator. See post, § 7472.

Order of persons entitled to letters. See ante, § 7432.

Waiver of right to administer. See note post, § 7450.

Revocation of letters. See post, § 7447.

§ 7444.

Waiver of right to administer. See note post, § 7450.

§ 7446.

Taking of affidavit in foreign country. See post, § 7997.

If a decedent's mother, residing in a foreign country, makes a written request for the appointment of a designated person as administrator of her son's estate in this state, and the same is entitled in the

court and cause and addressed to the judge of the court, and is accompanied by an affidavit as to the identity of the party making the request, executed before an officer authorized to administer oaths outside of the United States, such request virtually constitutes a pleading, and, as the request and affidavit are a part of the record in the case, and thus before the court, it is unnecessary to formally offer them in evidence. In *re Koller's Estate*, 40 Mont. 137, 143, 105 Pac. 549.

See, also, ante, § 7432.

§ 7447.

Revocation of letters for neglect to file inventory. See post, § 7500.

Waiver of right to administer. See note post, § 7450.

Where the mother of an intestate, who resides in a foreign country, makes a written request that a designated person be appointed as administrator of her son's estate in this state, but, before its receipt and filing in court, letters of administration are granted to the public administrator, such request impliedly authorizes the nominee to take the necessary steps to secure the removal of the public administrator; hence, it is not necessary for the nominee's petition, asking for the revocation of letters held by the public administrator, to show on its face that the mother herself had requested revocation. In *re Koller's Estate*, 40 Mont. 137, 142, 105 Pac. 549.

Editorial Notes.

Grounds for the removal of an executor or administrator. 138 Am. St. Rep. 525.

The benefit given to a surviving husband or wife to administer or to nominate may be waived, either expressly, or by a refusal or failure to claim, or by an unreasonable delay in claiming the benefit. In *re Infelise's Estate* (Mont.), 149 Pac. 365.

A nonresident heir may nominate an administrator, and such nominee may ask for the revocation of prior letters. In *re Infelise's Estate* (Mont.), 149 Pac. 365.

§ 7450.

Nominee of widow. See note ante, § 7436.

Right to waive advantage of law intended for one's own benefit. See ante, § 6181.

Revocation of letters of administration. See note ante, § 7447.

Grant of letters to any applicant. See ante, § 7432.

Order of persons entitled to administer. See ante, § 7432.

The primary purpose of sections 7432, 7444 and 7447-7450 is to confer a prior

right of administration upon those most interested in an intestate's estate; to signify the legislative will concerning the order of priority; to provide a method by which it may be once asserted in every case; and to authorize its assertion by nomination in certain instances; but the right is for the benefit of the persons named and may, under section 6181, ante, be waived, and the effect of its waiver is the same as the effect of a waiver in other cases. In *re Blackburn's Estate*, 48 Mont. 179, 187, 137 Pac. 381.

It is the policy of the law that the widow shall control in limine the administration of her late husband's estate. She may administer it herself or nominate some person in whom she places trust and confidence to administer it for her, or she may waive her right. In *re Blackburn's Estate*, 48 Mont. 179, 188, 137 Pac. 381.

If a widow's renunciation of her prior right to administer is fairly procured and freely given, she has exercised her prior right, and no longer has any to assert; but it is otherwise if such renunciation was not so procured and given. In *re Blackburn's Estate*, 48 Mont. 179, 194, 137 Pac. 381.

If a widow renounces her right to administer her late husband's estate in favor of her stepson, believing him friendly to her and not hostile to her claims, but he subsequently exhibits an attitude so generally hostile to the widow as to warrant the inference that he had held it before his appointment, and had carefully screened it from her until his position should be assured, it cannot be said that her waiver was fairly procured and freely given. It is therefore error to deny her petition for the revocation of the stepson's letters. In *re Blackburn's Estate*, 48 Mont. 179, 194, 137 Pac. 381.

§ 7472.

Order of persons entitled to letters. See ante, § 7432.

If the court or judge refuses to accord the preference given by this section, in making the appointment of a special administrator, it is, in the absence of a showing of incompetency, under section 7436, ante, a direct violation of the law. *State v. District Court*, 49 Mont. 146, 148, 140 Pac. 732.

§ 7474.

A special administrator has exclusive control over the estate for the time being, and until he is displaced by the appointment and qualification of an executor or general administrator. *Murphy v. Nett* (Mont.), 149 Pac. 713.

§ 7484.

Disqualifying a judge for imputed bias. See note ante, § 6315.

Editorial Notes.

Disqualification of judge to act in probate matter because of interest in estate. Ann. Cas. 1912C, 1165.

Waiver of objections to disqualified judge. Ann. Cas. 1912A, 1072.

§ 7488.

Where the court, after a partial hearing, holds that an executor must be held to account for profits derived through his dealings with the trust funds, but no final order is made, he may not apply to the supreme court for a writ of supervisory control. Such application is premature, and, in any event, he has an effective remedy by appeal. State v. District Court, 35 Mont. 366, 90 Pac. 161.

§ 7492.

It is within the power of a court to require an executor or administrator, who has been remiss in his duties, to turn over to his successor all property of the estate which has come into his hands. State v. District Court, 35 Mont. 366, 90 Pac. 161.

If a court goes beyond its powers in holding an executor to account for profits, or in removing him from office, he has the right of appeal. State v. District Court, 35 Mont. 367, 90 Pac. 161.

§ 7493.

Computation of inheritance tax. See notes post, §§ 7724, 7725.

It is the duty of the administrator to take possession as soon as he is appointed, and to make and return to the court an inventory and appraisal of all the property which comes into his hands. In re Colbert's Estate, 44 Mont. 259, 266, 119 Pac. 791.

§ 7500.

An administrator should not be removed for an alleged failure to include certain articles of personal property, of small value, in his inventory of an estate of large value, where, subsequent to the petition for the revocation of his letters, he files a supplemental inventory, including such articles. In re Blackburn's Estate, 48 Mont. 179, 195, 137 Pac. 381.

Editorial Notes.

Grounds for the removal of an executor or administrator. 138 Am. St. Rep. 525.

§ 7502.

The administration of the estate is an entirety, and extends to the whole of the estate so far as its assets are within the jurisdiction where the appointment is made. The administrator has the exclu-

sive control, subject to the orders of the district court for the purpose of administration. Murphy v. Nett (Mont.), 149 Pac. 713.

§ 7505.

Order to disclose assets is not appealable. See note ante, § 7098.

A petition for a citation under this section is fatally defective if it fails to allege that any one of the persons cited has in his possession, or has knowledge of, any deeds or writings which contain evidences of the right, title, interest or claim of the decedent. State v. District Court, 35 Mont. 320, 89 Pac. 62.

§ 7506.

Order to disclose assets is not appealable. See note ante, § 7098.

The order authorized by this section can go no further than to require a disclosure which may be used in an action pending or to be brought in behalf of the estate. In re Roberts' Estate, 48 Mont. 40, 42, 135 Pac. 909.

§ 7509.

Alienation of probate homestead. See note ante, § 4518.

Editorial Notes.

Rights of nonresident widow in homestead. 96 Am. Dec. 412.

§ 7512.

Alienation of probate homestead. See note ante, § 4518.

§ 7525.

These statutes of nonclaim are special in character. They supersede the general statute of limitations, and compliance with their requirements is essential to the foundation of any right of action against an estate, upon a cause of action that sounds in contract. Vanderpool v. Vanderpool, 48 Mont. 453, 138 Pac. 772.

If the identical claim sued upon was not presented to the executor or administrator, it is forever barred. Vanderpool v. Vanderpool, 48 Mont. 448, 455, 138 Pac. 772.

Editorial Notes.

Presentation of claim as condition precedent to action to foreclose mechanic's lien against decedent's estate. Ann. Cas. 1913D, 275.

Contingency of claim as affecting time for presentation. 58 L. R. A. 82.

§ 7526.**Editorial Notes.**

Statement of claims against estates of decedents. 130 Am. St. Rep. 311.

§ 7529.

The court cannot repeal or amend this section; and there must be a substantial compliance with its requirements. *Vanderpool v. Vanderpool*, 48 Mont. 448, 452, 138 Pac. 772.

§ 7532.

Variance amounting to failure of proof. See ante, § 6587.

No action can be maintained upon a claim against a decedent's estate unless it has been first presented to the executor or administrator for allowance; neither can it be maintained unless the identical claim sued upon is the one that was presented. A party cannot present a claim founded upon an open account and then maintain an action upon a promissory note, or vice versa; and, if he attempts to do so, the result is such a variance as amounts to a failure of proof. *Vanderpool v. Vanderpool*, 48 Mont. 448, 453, 138 Pac. 772.

The complaint, based upon a claim against a decedent's estate, fails to state a cause of action, where it does not allege the due presentation of the claim sued upon. *Vanderpool v. Vanderpool*, 48 Mont. 448, 453, 138 Pac. 772.

§ 7534.

Where an answer admits that a verified claim for the amount sued for has been duly presented to, and disallowed by, the administrator of one of the defendants, the plaintiff is not required to prove the presentation and disallowance. *Harrington v. Butte etc. Min. Co.*, 35 Mont. 532, 90 Pac. 748.

§ 7536.

A judgment providing that the plaintiff "have and recover" from the defendant, as administratrix, the amount of the verdict and costs, is not in proper form. It should be as directed in this section; but, as no substantial rights are affected, it forms no ground of reversal. *Gauss v. Trump*, 48 Mont. 92, 102, 135 Pac. 910.

§ 7542.

An executor or administrator may, in good faith, make advances to the estate, if suitable and for its benefit. Such advances may be allowed and recovered as claims against the estate. In re *Williams' Estate*, 47 Mont. 325, 331, 132 Pac. 421.

Editorial Notes.

Appointment of person as executor as releasing debt from him to testator. *Ann. Cas.* 1913E, 1278.

SALE OF DECEDENT'S PROPERTY.

§ 7546.

Sale for payment of debts. See note post, § 7562.

§ 7548.

By section 7576, post, the court or judge is vested with a discretion to accept an offer of ten per cent more in amount than that made in a return of real estate, but the fact that no such provision is found in this section as to personal property does not efface the question of implied discretion. *State v. District Court*, 42 Mont. 182, 185, 111 Pac. 717.

There is implied authority, in this section, for the district court or judge to exercise a judicial discretion in determining whether a particular sale of personal prop-

erty, belonging to an estate, shall or shall not be confirmed. *State v. District Court*, 42 Mont. 182, 187, 111 Pac. 717.

The district court, sitting in probate, has a discretion to refuse to confirm a sale of personal property upon the sole ground that a bid of ten per cent in excess of the former bid, together with the costs of resale, has been received; and, where no abuse of such discretion is shown, an application for a writ of supervisory control to compel the confirmation of the sale will be dismissed. *State v. District Court*, 42 Mont. 182, 187, 111 Pac. 717.

Editorial Notes.

Implied power of executor or trustee to sell real estate. 32 L. R. A. (N. S.) 676.

§ 7561. Authority to Sell Real Estate.

When a sale of the property is necessary to pay the allowance of the family, or the debts outstanding against the decedent, or the debts, expenses, or charges of administration, or legacies; or when it appears to the satisfaction of the court that it is for the advantage, benefit, and best interests of the estate, and those interested therein, including the minor heirs, if any, that the real estate, or some part thereof, be sold, the executor or administrator may sell any real as well as personal property of the estate, upon the order of the court or judge; and an application for the sale of

real property may also embrace the sale of personal property. [Amendment approved February 2, 1915; Laws 1915, p. 6.]

When sale is necessary. See note post, § 7562.

§ 7562. Petition for Sale, What It may Contain and to What It may Refer.

To obtain such order for the sale of real property, he must present a verified petition to the court or judge, setting forth the amount of personal property that has come to his hands, and how much thereof, if any remains undisposed of; the debts outstanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force one year; the debts, expenses and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general description of all the real property of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest and the condition and value thereof; and the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner; and if said order for sale of real estate is petitioned for on the ground that it is for the advantage, benefit and best interests of the estate, and those interested therein, including the minor heirs, if any, that a sale be made, the petition, in addition to the foregoing facts, must set forth in what way an advantage or benefit would accrue to the estate, and those interested therein, by such sale. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the order. [Amendment approved February 2, 1915; Laws 1915, p. 6.]

The petition is sufficient if it substantially complies with this section. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 279, 129 Am. St. Rep. 645, 99 Pac. 847.

The requirement of this section, that the "condition" and "value" of the real estate be set forth in the petition to sell such real property to pay debts, is not jurisdictional. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 284, 129 Am. St. Rep. 645, 99 Pac. 847.

Though there is no statement in the petition as to the "condition" of the real estate, such omission does not necessarily render the petition fatally defective; and "value" is sufficiently shown by the statement of a sum at which the property was appraised less than one year prior to the presentation of the petition. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 284, 129 Am. St. Rep. 645, 99 Pac. 847.

If enough appears upon the face of the petition to show the necessity of a sale, such petition is sufficient when drawn in question by a collateral attack upon the order of sale. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 279, 129 Am. St. Rep. 645, 99 Pac. 847.

If the petition upon which the order of sale was made is so defective that the court did not acquire jurisdiction, the or-

der may be assailed at any time upon a collateral as well as upon a direct attack; but if the facts stated in the petition were sufficient to confer jurisdiction upon the court to hear the application, its order directing a sale cannot be impeached upon a collateral attack. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 290, 129 Am. St. Rep. 645, 99 Pac. 847.

Where a court, having jurisdiction of the subject matter, orders the real property of a decedent to be sold under the authority of this section, any mere errors, irregularities or defects in the proceedings leading up to the sale are errors within the jurisdiction, and, in an action by the purchaser to quiet title, the heirs cannot collaterally attack the sale because of such errors. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 289, 129 Am. St. Rep. 645, 99 Pac. 847.

If the debts of the estate appear to exceed in amount the available means at hand with which to pay them, it may fairly be said to appear that a sale is necessary; and, if real estate is to be sold, the court or judge may properly consult the recitals of the petition as to the condition of the real estate to determine whether all or only a portion should be sold, and, if only a portion, then what particular portion. *Plains L. & I. Co. v.*

Lynch, 38 Mont. 271, 283, 129 Am. St. Rep. 645, 99 Pac. 847.

Where the court has jurisdiction to make an order of sale, the remedy for any error committed by it in making such order is by an appeal. Such error is not ground for a collateral attack. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 290, 129 Am. St. Rep. 645, 99 Pac. 847.

Editorial Notes.

Causes for which legislature may authorize sale of real property of decedents' estates. 79 Am. St. Rep. 82.

Sales of property, laches in applying for orders to pay debts. 26 Am. St. Rep. 22.

§ 7563. Order to Persons Interested to Appear.

If it appears to the court or judge, from such petition that it is necessary or that it would be for the advantage, benefit, and best interests of the estate, and those interested therein, including the minor heirs, if any, to sell the whole or some portion of the real estate for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed and an order thereupon made, directing all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary. [Amendment approved February 2, 1915; Laws 1915, p. 7.]

§ 7567. When Court may Order Sale.

If it appears necessary, or that it is for the advantage, benefit, and best interests of the estate and those interested therein, including the minor heirs, if any, to sell part of the real estate and that by a sale thereof the residue of the estate, real or personal or some specific part thereof, would be greatly injured, or diminished in value, or subjected to expense, or rendered unprofitable, or that after any such sale the residue would be so small in quantity or value or would be of such character, with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interest of all concerned that the same should be sold, the court or judge may authorize the sale of the whole estate, or of any part thereof necessary and for the best interest of all concerned. [Amendment approved February 2, 1915; Laws 1915, p. 7.]

§ 7568. When Order of Sale is to be Made.

If the court or judge is satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary, for any of the causes mentioned in this article, or that a sale of the whole or some portion of the real estate is for the advantage, benefit and best interests of the estate and those interested therein, including the minor heirs, if any, or if such sale be assented to by all of the persons interested, an order must be made to sell the whole, or so much and such parts of the real estate described in the petition, as the court or judge shall judge necessary or beneficial. [Amendment approved February 2, 1915; Laws 1915, p. 8.]

§ 7569.

The court may make its order of sale in the alternative. It may grant authority to sell either at public or private sale. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 285, 129 Am. St. Rep. 645, 99 Pac. 847.

Where a sale was made for cash and for more than the appraised value, and confirmed, any irregularity in failing to state the terms of sale, as required by this section, is cured. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 285, 129 Am. St. Rep. 645, 99 Pac. 847.

§ 7570. Interested Persons may Apply for Order of Sale—Form of Petition.

If the executor or administrator neglects to apply for an order of sale when it is necessary, or when it is for the advantage, benefit, and best interests of the estate, and those interested therein, including the minor heirs, if any, that the real estate, or some portion thereof be sold, any person in interest may make application therefor, in the same manner as the executor or administrator, and notice thereof must be given to the executor or administrator before the hearing. The petition of such applicant must contain as many of the matters set forth in section 7562 as he can ascertain, and the order of sale must fix the period of time within which the executor or administrator must make the sale. [Amendment approved February 2, 1915; Laws 1915, p. 8.]

§ 7576.

Effect of raised bid, of ten per cent, in sale of personal property. See note ante, § 7548.

Editorial Notes.

Sales of executors or administrators, when void because in excess of order of sale. 37 Am. Dec. 65.

§ 7578.

It is the order of confirmation which finally operates to divest the heirs of their title and to secure the property to the purchaser. All errors, irregularities and defects, not jurisdictional, are cured by confirmation. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 285, 286, 129 Am. St. Rep. 645, 99 Pac. 847.

§ 7599.

Evidence, in an action to set aside an executor's sale, held insufficient to show that the executor and the purchaser, who afterward became the guardian of the testator's minor children, had entered into a conspiracy to defraud the wards; on the contrary, it appeared that the sale was made in good faith, that the guardian accounted for everything and withheld nothing, and that the wards did not lose anything. *Smith v. Smith*, 45 Mont. 535, 579, 125 Pac. 987.

Editorial Notes.

Deeds of executors and administrators, form and contents of. 56 Am. Dec. 55.

Property, summary proceedings to discover. 115 Am. St. Rep. 208.

When personal representative not entitled to possession of personal assets of estate. 3 L. R. A. (N. S.) 704.

Right to rents on lease of intestate's property. 40 L. R. A. 321.

Right of personal representative to maintain action to quiet title to decedent's real estate. Ann. Cas. 1913A, 996.

§ 7607

Effect of death of partner. See note ante, § 5494.

Where death dissolves a general trading partnership, the surviving partners are entitled to continue in possession and to settle the partnership affairs. It is their duty to account to the deceased partner's estate, and, upon failure to do so, they may be compelled by summary proceedings. *Boehme v. Fitzgerald*, 43 Mont. 226, 227, 115 Pac. 413.

A surviving partner has the right to continue in possession of the partnership property and to settle the partnership business. *Weiss v. Hamilton*, 40 Mont. 99, 108, 105 Pac. 74.

An administrator may maintain against a surviving partner any action which the decedent could have maintained. In the matter of relief the personal representative of the decedent occupies the same relative position with reference to the surviving partners that the deceased, if alive, would sustain to his copartners. *Boehme v. Fitzgerald*, 43 Mont. 226, 228, 115 Pac. 413.

Editorial Notes.

Continuance of partnership for benefit of heirs of deceased partner. 56 Am. Dec. 517; 79 Am. St. Rep. 709.

Surviving partner's right to compensation. 112 Am. St. Rep. 843; 5 Ann. Cas. 664; 17 L. R. A. (N. S.) 399.

§ 7611.

When sale is necessary. See note ante, § 7562.

§ 7613.

When sale is necessary. See note ante, § 7562.

§ 7614.

Contracts of sale and conveyances. See ante, §§ 4749 and 4751.

A petition, under this section, to compel an executor or administrator to convey

real estate, is sufficient where it sets forth the contract at length and alleges an adequate consideration. It need not contain all the essential averments of a bill in equity for the specific performance of a

contract, nor is it necessary for the allegations of the petition to avoid every negative statement contained in section 6103, ante. In re Grogan's Estate, 38 Mont. 540, 542, 100 Pac. 1044.

§ 7625. Curative Deeds.

All sales by executors and administrators of their decedent's real and personal property and all sales by guardians of their ward's real and personal property, in this state which previous to the date of this amendatory act were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers to such executors or administrators or guardians or their successors in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain an executor's or administrator's or guardian's deed or conveyance to such purchaser for such real or personal property; and, in case such deed or conveyance shall not have been given shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now or when executed, shall be sufficient to convey to such purchaser all the title that such decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said executor or administrator or guardian shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity. [Amendment approved February 2, 1915; Laws 1915, p. 9.]

Defects to be disregarded. See note ante, § 7562.

A mere clerical error in writing in the wrong range in a description of land in the order of sale is to be disregarded

where but one piece of land is involved, where no one was misled by the mistake, and where the heirs reaped the benefit. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 289, 129 Am. St. Rep. 645, 99 Pac. 847.

ACCOUNTS OF EXECUTOR.

§ 7641. Accounting of Executor After Revocation of His Authority.

When the authority of an executor or administrator ceases, or is revoked for any reason, he may be cited to account before the court or judge at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator. And if an executor or administrator dies, his account may be presented by his personal representatives to, settled by the court in which the estate of which he was executor or administrator is being administered, and upon the petition of the successor of such deceased executor or administrator, such court may compel the personal representatives of such deceased administrator or executor to render an account of the administration of their testator or intestate and must settle such account as in other cases. [Amendment approved March 18, 1913; Laws 1913, p. 470.]

§ 7645.

The giving of notice in probate proceeding may be rendered unnecessary by the appearance of the parties and their participation in the proceedings. *Estate of Davis*, 35 Mont. 280, 88 Pac. 957.

The giving of notice required by this section is necessary to clothe the court with jurisdiction of the person of those

interested in the estate; the giving of the notice is indispensable, and, if not observed, the order of allowance will not be binding. *Estate of Davis*, 35 Mont. 280, 88 Pac. 957.

§ 7649.

Where the account of an administratrix has been settled, and it has been adjudged

that the estate is indebted to her for moneys advanced by her for the benefit of the estate, the order of court settling such account is, in the absence of an affirmative showing on the face of the claims for money so advanced, conclusive, both on the estate and on all persons interested therein, who, at the time of settlement, were not laboring under any legal disability. In *re Williams' Estate*, 47 Mont. 325, 330, 132 Pac. 421.

Editorial Notes.

Annual settlements of executors and administrators, effect of as res. adjudicata. 86 Am. Dec. 143.

§ 7650.

Where the record on appeal contains no proof of notice, but the order finds "that the clerk had given notice of the settlement of said account in the matter and for the time heretofore ordered by the court," this meets the requirement of the section, and is conclusive upon the parties on appeal. *Estate of Davis*, 35 Mont. 280, 88 Pac. 957.

§ 7651.

When sale is necessary. See note ante, § 7562.

§ 7652.

There is no statutory requirement that an administrator must keep the funds in his hands profitably invested, and he is not ordinarily chargeable with interest unless he has actually received it. *Estate of Davis*, 35 Mont. 286, 88 Pac. 957.

Numerous sections of the code, relating to probate matters, show a clear purpose to place, in the hands of the court, authority sufficient to secure a just administration of the estate, to the end that creditors may be protected and the heirs receive the largest amount of the property compatible with an economic but complete administration of the estate. *State v. District Court*, 42 Mont. 182, 185, 111 Pac. 717.

§ 7661.

It is clear, from the provisions of this section and of section 7662, post, that the final account of an administrator or executor cannot be settled or approved so long as there are outstanding claims against the estate, which have not been paid, if there is any property in the hands of the representative that is available for the payment of such claims, in whole or in part. In *re Williams' Estate*, 47 Mont. 325, 329, 132 Pac. 421.

It is error for the district court to settle and approve the final account of an administrator where it appears that claims against the estate for advancements made for its benefit, though properly allowed, are unpaid, and where there is no showing that all property available for their payment has been exhausted. In *re Williams' Estate*, 47 Mont. 325, 331, 132 Pac. 421.

§ 7662.

Prerequisite to settlement of account. See note ante, § 7661.

HEIRSHIP AND DISTRIBUTION.

§ 7669.

This section is susceptible of but one meaning, namely, that any heir, devisee or legatee shown by the record to be such, and concerning whose right to inherit there is no question raised, may ask for distribution to him of the share of the estate which the record shows he is entitled to receive, and about which there is no controversy. In *re Fleming's Estate*, 38 Mont. 57, 61, 98 Pac. 648.

In a proceeding under this section for partial distribution, the questions of heirship, amount of distributive estate claimed, etc., cannot be considered. Those questions are to be determined under the express authority of section 7672, post. In *re Fleming's Estate*, 38 Mont. 57, 59, 98 Pac. 648.

§ 7670.

Appearance by foreign heirs to establish heirship. See note ante, § 6589.

See note post, § 7672.

Where a motion to dismiss the appeal of an executor and some of the legatees from that portion of a "judgment," rendered in a proceeding had under this and the two following sections, based on the ground that an appeal does not lie from a part thereof, is denied upon consideration of exhaustive briefs of counsel, the determination will be deemed the law of the case on the submission of the question on its merit. *Estate of Klein*, 35 Mont. 202, 88 Pac. 798.

The denial of a motion to affirm an order of the district court, in the proceeding under this and the two following sections, refusing a new trial to an executor and some of the legatees, of issues found in favor of other legatees, is held not the law of the case upon final determination on the merits. *Estate of Klein*, 35 Mont. 202, 88 Pac. 798.

Proceeding by German heirs to establish heirship. In *re Colbert's Estate*, 44 Mont. 259, 264, 119 Pac. 791.

§ 7671. Proceedings for Determination of Heirship.

All persons appearing within the time limited must file their written appearance in person or through their authorized attorney, such attorney filing at the same time written evidence of his authority to so appear, which written evidence must be in the English language, or if in a foreign language, the same must be accompanied by an English translation thereof duly certified as correct by a United States consul, entry of which appearance shall be made in the minutes of the court and in the register of proceedings of said estate. And the court or judge shall, after the expiration of the time limited for appearing as aforesaid, enter an order adjudging the default of all persons for not appearing as aforesaid, who shall not have appeared as aforesaid. At any time within twenty days after the date of the order of the court or judge establishing proof of service of such notice, any of such persons so appearing may file his complaint in the matter of the estate, setting forth the facts constituting his claim of heirship, ownership, or interest in said estate, with such reasonable particularity as the court or judge may acquire, [require] and serve a copy of the same upon each of the parties or attorneys who shall have entered their written appearance as aforesaid, if such parties or such attorneys reside within the county; and in case any of them do not reside within the county, then service of such copy of said complaint shall be made upon the clerk of said court for them, and the clerk shall forthwith mail the same to the address of such party or attorney as may have left with said clerk his postoffice address. Such parties are allowed twenty days after the service of the complaint, as aforesaid, within which to plead thereto, and thereafter such proceedings shall be had upon such complaint as in this code provided in case of an ordinary civil action; and the issues of law and of fact arising in the proceeding shall be disposed of in like manner as issues of law and fact are herein provided to be disposed of in civil actions, with a like right to a motion for a new trial and appeal to the supreme court; and the provisions in this code contained regulating the mode of procedure for the trial of civil actions, the motion for a new trial of civil actions, statements on motion for a new trial, bills of exceptions, and statements on appeal, as also in regard to undertakings on appeal, and the mode of taking and perfecting appeals, and the time within which such appeals shall be taken, shall be applicable thereto; provided, however, that all appeals herein must be taken within sixty days from the date of the entry of the judgment or the order complained of. [Amendment approved March 4, 1913; Laws 1913, p. 104.]

Complaint by foreign heirs to establish heirship. See note ante, § 6589.

Law of the case. See note ante, § 7670.

Procedure. See note post, § 7672.

In a proceeding to determine the rights of a large number of legatees, wherein the executor and some of the legatees are adjudged entitled to share in the distribution of the estate, but move for a new trial of issues found in favor of other claimants, the aggrieved parties may move for a new trial and appeal from an adverse ruling. The contention that the supreme court cannot review the order denying a new trial, because of the complications that would arise in the district court, should a new trial of part of the issues

be ordered, is untenable. *Estate of Klein*, 35 Mont. 201, 88 Pac. 798.

The question of heirship and the interest of any heir may be determined, not only under this and the next two preceding sections, but also upon a proceeding for the final distribution of an estate. In *re Fleming's Estate*, 38 Mont. 57, 59, 98 Pac. 648.

§ 7672.

Heirship, amount of distributive estate claimed, etc., cannot be determined on petition for partial distribution. The clear implication is that such questions cannot be determined in any other proceeding than one instituted under sections 7670-7672, or in one for final distribution. See note ante, section 7669.

§ 7673. Distribution of Estate—How and to Whom Made.

Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, or devisee, the court or judge, must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, and the issue of other children, and any of them, before the close of the administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance must, without administration, be distributed to the other heirs at law; provided, that whenever it appears from the records or files of an estate under course of administration, that any of the persons claiming to be heirs, or claiming a right to share in said estate, are nonresidents of the United States, then a proceeding to determine their rights shall be had under the provisions and as provided for in sections 7670, 7671, and 7672 of the Revised Codes with reference to the determination of heirship. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution; and a settlement thereof together with an estimate of the expenses of closing the estate, must be made by the court or judge, and included in the order; or the court or judge may order notice of the settlement of such supplementary account, and refer the same as in other cases of the settlement of accounts. [Amendment approved March 4, 1913; Laws 1913, p. 105.]

§ 7675.

The provisions of this section do not relieve an estate from the burden of an inheritance tax, nor impair the power of the court to collect it. The jurisdiction of the court is conferred by section 7740, post. *State v. District Court*, 41 Mont. 357, 364, 109 Pac. 438.

The delivery provided for by this section, when the property is ready for distribution, serves all the purposes of distribution, and the power to direct the delivery is tantamount to the power to order distribution directly to the persons entitled to take. *State v. District Court*, 41 Mont. 357, 365, 109 Pac. 438.

§ 7679.

Final steps of administration. See note ante, § 6315.

§ 7682.

Title vests only upon confirmation of commissioners' report. See note ante, § 6315.

Vesting of title. See notes post, §§ 7683-7685.

§ 7683.

Title vests only upon confirmation of commissioners' report. See note ante, § 6315.

Vesting of title. See note ante, § 7682, and notes post, §§ 7684 and 7685.

§ 7684.

Title vests only upon confirmation of commissioners' report. See note ante, § 6315.

Vesting of title. See notes ante, §§ 7682 and 7683, and note post, § 7685.

§ 7685.

Title vests only upon confirmation of commissioners' report. See note ante, § 6315.

Vesting of title. See notes ante, §§ 7682-7684.

§ 7701.

If the clerk enters in the minute-book, at length, an order to show cause why real estate should not be sold, such entry, though the order purports to have been signed by the judge, is evidence that the order was made, as such signature may be treated as surplusage; and there is no requirement that the clerk shall recite that the order was made. *Plains L. & I. Co. v. Lynch*, 38 Mont. 271, 285, 129 Am. St. Rep. 645, 99 Pac. 847.

§ 7711.

Jury trial. See ante, § 7398, and post, § 7714.

An issue in a probate matter is to be tried and determined as an ordinary civil action, except that a jury trial is a privi-

lege, and not a matter of right. In re Peterson's Estate, 49 Mont. 96, 97, 140 Pac. 237.

§ 7712.

Appeal. See note ante, § 7098.

New trials, in probate proceedings, are proper only in cases involving issues arising upon authorized pleadings. In re Antonoli's Estate, 42 Mont. 219, 223, 111 Pac. 1033.

INHERITANCE TAXATION.

§ 7724. Property or Successions Subject to Tax.

After the passage of this act, all property which shall pass by will or by the intestate laws of this state, from any person who dies seised or possessed of the same, while a resident of this state, or if such decedent was not a resident of this state, at the time of his death, which property, or any part thereof, shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death to any person or persons, or to any body politic corporate, in trust or otherwise, or any property, which shall be in this state or the proceeds of all property outside of this state, which may come into this state, and which may be or should be distributed in this state to any such heirs, devisees or legatees, by reason whereof any person or corporation shall become beneficially entitled in possession or expectancy, to any such property, or to the income thereof, other than to or for the use of his or her father, mother, husband, wife, lawful issue, brother, sister, the wife or widow of the son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Montana, and any lineal descendant of such decedent born in lawful wedlock, shall be and is subject to a tax of five dollars on every hundred dollars of the market value of such property, and at a proportionate rate for any less amount, to be paid to the treasurer of the proper county hereinafter defined for the use of said county and state in the proportions hereafter stated: and all administrators, executors and trustees shall be liable for any and all such taxes until the same have been paid as hereinafter directed.

This section is here republished to correct a typographical error which appears in the Revised Codes of 1907.

An inheritance tax is not a tax upon the property itself, but rather a duty or burden imposed by the state upon the privilege of acquiring property by inheritance; the statute authorizing it is free from constitutional objections. Estate of Tuohy, 35 Mont. 431, 90 Pac. 170.

The expression "increase of all property" includes augmentation in value as well as multiplication in kind. This rule is applied in the case of property consisting of lode mining claims in Estate of Tuohy, 35 Mont. 431, 90 Pac. 170.

An inheritance tax is not an imposition upon property, but is an exaction by the state for the right to receive or take property by testamentary disposition or succession, or by any deed or instrument to take effect at or after the death of the testator. State v. District Court, 45 Mont. 335, 339, Ann. Cas. 1914A, 469, 122 Pac. 922.

The basis for the computation of an inheritance tax is the clear value of the

whole estate, and not that of each individual legacy or distributive share. State v. District Court, 45 Mont. 335, 337, 341, Ann. Cas. 1914A, 469, 122 Pac. 922.

Where the decedent, at the time of his death, was not a resident of this state, this section requires the collection of an inheritance tax, the amount of which is to be ascertained by computation, using, as a base, the value of the estate, exclusive of exemptions, delivered to the executor or administrator, in accordance with the provisions of section 7675, ante. State v. District Court, 41 Mont. 357, 364, 109 Pac. 438.

Under this section, an estate valued at less than "seventy-five hundred dollars," distributable, among others, to brothers and sisters, is exempt; but such exemption is to be construed as referring to the clear value of the estate, not to the distributive shares. State v. District Court, 45 Mont. 335, 341, Ann. Cas. 1914A, 469, 122 Pac. 922.

Where the clear value of an estate is ten thousand seven hundred seventy-two dollars and twenty-seven cents, distributable among the decedent's four brothers and sisters, it is proper for the court to order the administrator to pay a tax at the rate of one dollar per hundred upon that amount. *State v. District Court*, 45 Mont. 335, 336, 343, Ann. Cas. 1914A, 469, 122 Pac. 922.

Editorial Notes.

Liability to succession tax, as dependent upon amount of estate transferred. Ann. Cas. 1914A, 472.

Inheritance taxation; its leading features. 127 Am. St. Rep. 1035.

Taxation of collateral inheritances. 41 Am. St. Rep. 580; 88 Am. St. Rep. 513.

Liability to succession tax of transfer to alien. Ann. Cas. 1912A, 857.

Situs of debt for purpose of succession tax. Ann. Cas. 1912A, 903.

Assessment of succession tax as affected by appreciation or depreciation of property subsequent to death of decedent. Ann. Cas. 1912C, 1017.

Community property as subject to inheritance tax. Ann. Cas. 1913D, 496; 20 L. R. A. (N. S.) 208; 39 L. R. A. (N. S.) 1107.

Personal property in foreign jurisdiction at time of death of owner as subject to succession tax in state of owner's residence. Ann. Cas. 1913D, 520.

Constitutionality of succession taxes. Ann. Cas. 1913D, 757; 1 Ann. Cas. 30; 12 Ann. Cas. 953.

Succession tax on conveyance to take effect after grantor's death. 38 L. R. A. (N. S.) 1141.

Construction of inheritance tax statute with respect to rate of taxation. Ann. Cas. 1914B, 627.

Construction of inheritance tax statute so as to avoid double taxation. Ann. Cas. 1914B, 691.

§ 7725.

Computation of inheritance tax. See note ante, § 7724.

In this section and in section 7727 there is an implication that the basis or measure for computing the amount of the inheritance tax is the value of the estate as it is made to appear by the appraisement of it in the ordinary way. This, however, is not exclusive. *State v. District Court*, 41 Mont. 357, 364, 109 Pac. 438.

When the estate has increased in value between the date of the death of the testator and the date of the decree of distribution, the court may proceed, under this section, to ascertain such increase. *State v. District Court*, 41 Mont. 357, 365, 109 Pac. 438.

§ 7727.

Computation of inheritance tax. See notes ante, §§ 7724 and 7725.

The payment of an inheritance tax is in nowise dependent upon the distribution of the estate, nor upon the amount of the specific legacies or distributive shares; it is due and payable upon the value of the estate, at the death of the decedent. *State v. District Court*, 41 Mont. 357, 364, 109 Pac. 438.

§ 7729.

Computation of inheritance tax. See note ante, § 7724.

This section applies in cases of delayed payment, or where there is uncertainty as to the value of the property, and hence as to the amount of the tax due to appreciation, or to the character of the interest which passes to the beneficiary, such as future contingent interests or incomes from them, referred to in section 7725, ante. *State v. District Court*, 41 Mont. 357, 364, 109 Pac. 438.

This section applies whenever circumstances require an appraisement to be made, and one may be made as often as occasion may require. *State v. District Court*, 41 Mont. 357, 365, 109 Pac. 438.

§ 7738.

See notes ante, §§ 7724 and 7725.

Citation to compel payment. See note post, § 7741.

All persons who are interested in the disposition of estates are entitled to some kind of notice of proceedings which affect their interests, and to a hearing or an opportunity to be heard; but, if the statute provides for reasonable notice and an opportunity to be heard, it is not open to the objection that it does not provide "due process of law." *State v. District Court*, 41 Mont. 357, 366, 109 Pac. 438.

This section and section 7741, post, forming a part of the inheritance tax law, provide for reasonable notice to nonresident distributees of the appraisement of the estate for the purposes of fixing the inheritance tax, and also provide for an opportunity to be heard. The legislation is not, therefore, open to the objection that it fails to provide "due process of law." *State v. District Court*, 41 Mont. 357, 367, 109 Pac. 438.

The court or judge in fixing the time in the notice mentioned in this section should give a reasonable opportunity to those interested to be heard, according to the analogies of the statute in fixing the time for appearance after publication of summons, or those providing for notice in other cases. *State v. District Court*, 41 Mont. 357, 368, 109 Pac. 438.

§ 7740.

Amount of inheritance tax, how computed. See note ante, §§ 7724, 7725.

§ 7741.

Notice and opportunity to be heard. See note ante, § 7738.

GUARDIANSHIP.

§ 7753.

Guardianship of person and estate of incompetent person. See note post, § 7765.

Editorial Notes.

Right of infant to select his own guardian. Ann. Cas. 1912C, 477.

Parents right to appointment. 33 L. R. A. (N. S.) 869.

ations of interest. In re Allard Guardianship, 49 Mont. 219, 141 Pac. 661.

Editorial Notes.

Power of guardian with respect to ratification of conveyance of ward. Ann. Cas. 1912D, 704.

§ 7764.

Parties to contest of probate of will. See ante, § 7397.

A person may be mentally incompetent and yet not be a maniac, an idiot, nor an insane person. State (ex rel. Carroll) v. District Court, 50 Mont. 597, 147 Pac. 612.

In a proceeding to appoint a guardian for an alleged incompetent person, the adversary parties are the petitioner and the alleged incompetent. In re Murphy's Estate, 43 Mont. 353, 375, Ann. Cas. 1912C, 380, 116 Pac. 1004.

§ 7774.

This section was enacted to be obeyed, and a failure to return any inventory whatever is a flagrant violation of the guardian's trust. In re Allard Guardianship, 49 Mont. 219, 141 Pac. 661.

§ 7765.

Impropriety in making applications to court. See note ante, § 6324.

The person and estate of a minor are, ordinarily, independent in a guardianship matter, and the court may appoint a guardian for either the person or estate, or for both; but no such authority exists in the case of an incompetent person. In the latter case, the necessity for a guardian of the person is equally as great as the necessity for a guardian of the estate. State (ex rel. Carroll) v. District Court, 50 Mont. 597, 147 Pac. 612.

§ 7775.

Guardian as officer of court. See ante, § 3788.

Confidential nature of relation. See ante, § 3787.

This section was enacted to be obeyed. It is a remissness of duty, where a period of more than thirteen years has elapsed without any report having been rendered by the guardian or required by the court. In re Allard Guardianship, 49 Mont. 219, 141 Pac. 661.

§ 7767.

Right of guardian to file affidavit disqualifying judge. See note ante, § 6315.

Where a guardian of minors, within little more than a year after his appointment, withdraws from his accounts as guardian about thirty thousand dollars in round numbers, and is asked many years afterward as to the purpose for which he gave a particular check, it is no explanation for him to say, "I do not know." That answer has no place in the response of one who deals with trust funds. It is his duty to be able to say for what purpose the money was used, and to present vouchers for it. In re Allard Guardianship, 49 Mont. 219, 141 Pac. 661.

§ 7771.

The guardian's duty is to keep a just and true account, which will disclose at all times, the source of every item of income and the purpose of every item of expense. In re Allard Guardianship, 49 Mont. 219, 141 Pac. 661.

A guardian or other trustee has no moral or legal right to mingle trust funds with his own private property, or to profit by the use of the funds belonging to the cestui que trust. In re Allard Guardianship, 49 Mont. 219, 141 Pac. 661.

If a guardian loans his ward's money on a note, and the ward refuses to accept the note, the guardian must account, not only for the principal, but also for the accumu-

The allowance of an attorney's fee to a guardian is within the court's discretion, and, where that is not abused, the appellate court will not disturb the amount fixed. In re Allard Guardianship, 49 Mont. 219, 141 Pac. 661.

§ 7777.

Relation of guardian and ward is confidential and is subject to provisions of title on trusts. See ante, §§ 3787 and 5375.

A mere technical breach of duty, on the part of a guardian, that does not result in injury to the ward's estate will not ordinarily justify a court in withholding compensation to the guardian altogether, but a flagrant violation of the duties of his trust will do so. In re Al-

lard Guardianship, 49 Mont. 219, 225, 141 Pac. 661.

A guardian's right to compensation contemplates a faithful stewardship. A breach of duty which does not result in injury to the ward's estate will not ordinarily justify a court in withholding compensation altogether, but a flagrant violation of the duties of his trust will do so. In re Allard Guardianship, 49 Mont. 219, 225, 141 Pac. 661.

§ 7782.

What "borrowing," by guardian, of his ward's funds, in the guardian's hands, is not embezzlement. *Smith v. Smith*, 45 Mont. 535, 581, 125 Pac. 987.

§ 7783.

Management of estate. See ante, § 7771.

DEPENDENT CHILDREN.

§ 7843a. Financial Aid for Children in Their Own Home.

Be it enacted by the Legislative Assembly of the State of Montana.

(Section 1.) *Allowance for Dependent Children.*—Every child under the age of fourteen years, whose father is dead, or an inmate of some Montana state institution of charity or correction, or who is physically or mentally unable to work, which act of disability shall have occurred while a resident of the state, and who has, for a period of two years or more, failed to provide for said child, shall be entitled to assistance which will help make it possible for such child to be cared for in his or her own home instead of being sent to some public institution, said financial aid to be given to the mother of said child or children.

(Section 2.) *Amount of Allowance—Subject to Subsequent Provisions of this Act.*—Every child as provided for in section 1, whose mother is wholly dependent upon her labor for support, shall be allowed from the public moneys of the county, in which said mother resides, the sum of ten dollars per month if there is one child in said family; if more than one child then seven dollars and fifty cents per month for a second child and two dollars and fifty cents per month for each additional child, said money to be paid to the mother of said child or children.

(Section 3.) *Conditions of Allowance.*—The allowance herein referred to shall be made subject to the following conditions: (1) The child or children for whose benefit the allowance is made must be living with the mother of such child or children. (2) The allowance shall be made only when in absence of such allowance, the mother would be required to work regularly away from her home and children, when by means of such allowance, she will be able to remain at home with her children. (3) The mother must, in the judgment of the juvenile court officer if there be one, and if not then in the judgment of the judge of the district court, be a proper person physically, mentally and morally for the bringing up of her children. (4) Such allowance shall, in the judgment of the court, be necessary to save the child or children from neglect. (5) No person shall receive the benefit of this act, who shall not have been a resident of the county in which such application is made, for at least two years next before the making of such application for such allowance. (6) Provided that the provisions of this act shall not apply to any child which has property of its own sufficient for its support.

(Section 4.) *Allowance Paid Out of County Funds.*—Whenever the judge shall determine that an allowance under this act shall be made, he shall make an order to that effect, which order, among other things, shall set out in full the name of the mother, her place of residence, the names

and ages of the children, and the amount allowed to each child, and upon presentation of such order, the county commissioners shall direct monthly warrants to be drawn therefor, which warrants shall be paid from the general funds of the county.

(Section 5.) *When Allowance Shall Cease.*—No allowance for any child shall continue after such child shall have reached the age of fourteen years. Whenever any mother of any child on whose account any allowance shall have been made under the provisions of this act, shall marry, such allowance shall cease. [Approved March 5, 1915; Laws 1915, c. 86, p. 111.]

EVIDENCE.

§ 7844.

Preliminary proof of death, required by life insurance policy, sufficiency of. See note ante, § 5628.

§ 7847.

In a criminal case it is proper to instruct the jury that moral certainty only is required, "or that degree of proof which produces conviction in an unprejudiced mind." Moral certainty is the very highest grade of certainty that human testimony can produce. *State v. Powers*, 39 Mont. 259, 263, 102 Pac. 583.

Editorial Notes.

Necessity that circumstantial evidence to convict of crime must exclude every reasonable hypothesis, except guilt of defendant. *Ann. Cas.* 1913E, 428; 41 L. R. A. (N. S.) 750.

Degree of certainty necessary to establish fraud in civil action. 33 L. R. A. (N. S.) 836.

Quantum of proof necessary to establish willful burning in action on fire insurance policy. *Ann. Cas.* 1912A, 1139.

Quantum of proof necessary to establish venue in criminal prosecution. *Ann. Cas.* 1912B, 939.

Preponderance of evidence as determined by mere number of witnesses. *Ann. Cas.* 1913D, 676.

§ 7856.

The solution of any issue in a civil case may rest entirely upon circumstantial evidence. All that is required is that the evidence shall produce moral certainty in an unprejudiced mind. *Gilmore v. Ostronich*, 48 Mont. 305, 308, 137 Pac. 378.

Where a plaintiff, in a civil case, relies upon circumstantial evidence, his claim is supported by satisfactory evidence as defined in this section. The rule requiring proof beyond a reasonable doubt does not apply to civil cases; it applies solely to criminal cases. *Gilmore v. Ostronich*, 48 Mont. 305, 308, 137 Pac. 378.

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§ 7861.

In order for the direct evidence of one witness to be sufficient to prove a fact, he must be one who is entitled to full credit. *Bowen v. Webb*, 37 Mont. 479, 484, 97 Pac. 839.

In a prosecution for statutory rape, where the prosecutrix is entitled to full credit, a conviction may be had upon her testimony alone. *State v. Vinn*, 50 Mont. 27, 144 Pac. 772.

§ 7862.

One may be identified by his voice. *State v. Vanella*, 40 Mont. 326, 339, 20 *Ann. Cas.* 398, 106 Pac. 364.

Testimony is not hearsay where the witness can answer every question of his own knowledge, and the value of the testimony given does not depend in any degree upon the veracity or competency of any other person. *State v. Crean*, 43 Mont. 47, 60, *Ann. Cas.* 1912C, 424, 114 Pac. 603.

However objectionable testimony may be, if it is objected to as hearsay, when it is clearly not so, the objection must be passed upon as made, both by the trial court and on review. *State v. Crean*, 43 Mont. 47, 60, *Ann. Cas.* 1912C, 424, 114 Pac. 603.

Editorial Notes.

Boundaries, hearsay to prove. 15 *Am. Dec.* 628; 36 *Am. Rep.* 729; 60 *Am. Rep.* 589; 94 *Am. St. Rep.* 678.

§ 7864.

Instructions involving questions of evidence. See post, § 8028.

§ 7866.

This section is but declaratory of the common law; it does not add to nor subtract from the rule as it existed prior to the adoption of the statute. *Washoe Copper Co. v. Junila*, 43 Mont. 178, 185, 115 Pac. 916.

In a suit to have the executor and heirs of the plaintiff's co-owner in a mining

claim declared trustees for his benefit, declarations made by the decedent, after issuance of patent, that the plaintiff was still the owner of an interest in the claim, when in fact his name had been omitted from the patent, and evidence that the decedent at one time joined with the plaintiff in a lease of the property, are admissible in evidence. *Delmos v. Long*, 35 Mont. 154, 88 Pac. 778.

In the absence of any offer of proof concerning what the defendant in an action for waste intended to show by a question to a witness, as to what the plaintiff's husband had said to him in relation to his or her interest in the land, the appellate court is not in a position to say from the mere reading of the question that its answer was erroneously excluded. *Erbes v. Smith*, 35 Mont. 50, 80 Pac. 568.

One who offers in evidence the declaration of a person through whom he traces his title to land must show that it was made while the declarant was holding title; that he was in fact the grantor of the party against whom the declaration is offered; and that the declaration was against interest. *Washoe Copper Co. v. Junila*, 43 Mont. 178, 185, 115 Pac. 916.

Editorial Notes.

Declarations of former owner of land as evidence against their successors in title. 134 Am. St. Rep. 610.

Declarations by vendor made out of court as to his purpose in making a conveyance or transfer attacks as fraudulent against creditors. 41 L. R. A. (N. S.) 1.

§ 7867.

Admission in answer may be offered in evidence, without embracing the entire answer. See note post, § 7887.

This provision was not intended to embody the statement of a rule by which to determine the competency of declarations relative to a transaction, but to be a mere direction that they must be deemed competent when they are so connected with the main transaction as to form a part of it. *Callahan v. Chicago etc. R. R. Co.*, 47 Mont. 401, 410, 47 L. R. A. (N. S.) 587, 133 Pac. 687.

In an action to recover a sum of money for communicating to the defendant valuable information about a cross-cut in a mine intersecting a vein or ore, and for which information the defendant promised to pay, whatever the defendant said and did, while engaged in one of the preliminary steps leading up to the consummation of the contract, without the doing of which there would have been no contract, is a part of the *res gestae* and is competent. *McCrimmon v. Murray*, 43 Mont. 457, 471, 117 Pac. 73.

Declarations, when admissible as part of the *res gestae*. *Callahan v. Chicago etc. R. R. Co.*, 47 Mont. 401, 410, 47 L. R. A. (N. S.) 587, 133 Pac. 687.

Editorial Notes.

Res gestae, what included within. 95 Am. Dec. 51; 58 Am. Rep. 184; 16 Am. St. Rep. 407.

Res gestae, statement of injured persons, when constitutes parts of. 34 Am. Rep. 479.

Res gestae, declarations made immediately after an accident. 36 Am. Rep. 899.

Declaration of bystander at time of accident as part of *res gestae*. Ann. Cas. 1912C, 319.

How near main transaction must declaration be made in order to constitute part of the *res gestae*. 19 L. R. A. 733.

Admissibility as *res gestae* of statements or declarations made by injured person to physician while latter was examining him in order to qualify as a witness. 21 L. R. A. (N. S.) 826.

Statements made some time after accident as *res gestae*. 42 L. R. A. (N. S.) 917; 47 L. R. A. (N. S.) 587.

§ 7871.

Admissibility of self-serving declaration. *Hulse v. Northern Pac. Ry. Co.*, 47 Mont. 59, 63, 130 Pac. 415.

Admission in answer may be offered in evidence, without embracing the entire answer. See note post, § 7887.

Editorial Notes.

Admissibility of evidence of general conduct under proven circumstances to show conduct of same kind under similar circumstances on particular occasion. Ann. Cas. 1913D, 1256.

§ 7872.

Certified copies of the records of the county commissioners, showing the result of a local option election, together with a certified copy of the affidavit of the publisher of the newspaper giving notice of the election, made by the county clerk, are properly admitted in evidence on the trial of one charged with an unlawful sale of liquor. *State v. O'Brien*, 35 Mont. 482, 499, 10 Ann. Cas. 1006, 90 Pac. 514.

Copies of the records of a hotel, though correct, are not admissible; they are not the best evidence. Under section 7941, post, the original writing must be proved, or its absence accounted for. *Cohen v. Clark*, 44 Mont. 151, 158, 119 Pac. 775.

Editorial Notes.

Competency of testimony as to contents of document where witness'

knowledge is based merely on hearing it read. *Ann. Cas. 1912D, 790.*
 Secondary evidence of contents of absent books of account. 52 L. R. A. 604.

Admissibility of copies of records of other states. 5 L. R. A. (N. S.) 938.

§ 7873.

Application of section to contract for employment. See note ante, § 5072.

Interpretation of written contracts. See ante, § 5028.

Circumstances may be considered. See post, § 7877.

Effect of writing. See ante, § 5018.

Relief from mistake in writings. See note ante, § 4983.

Curing erroneous admission of evidence. See note ante, § 5010.

A written contract supersedes any prior oral negotiations relative to its subject matter, and must be considered as containing the full agreement of the parties. *Arnold v. Fraser, 43 Mont. 540, 550, 117 Pac. 1064.*

Parol evidence is not admissible, in the absence of any issue of fraud or mistake, to vary the terms of a written contract, which is plain and unambiguous. *Western L. & S. Co. v. Smith, 42 Mont. 442, 113 Pac. 475.*

Editorial Notes.

Parol to engraft condition, limitation, or reservation on a deed. 1 Am. Dec. 44.

Parol to show warranty outside of contract. 5 Am. St. Rep. 197; 19 L. R. A. (N. S.) 1183.

Parol to add to or vary a writing. 56 Am. St. Rep. 659; 17 L. R. A. 270.

Admissibility of parol evidence to affect terms of contract of guaranty. *Ann. Cas. 1912A, 781.*

Parol to explain mercantile and other contracts. 6 Am. Rep. 678; 28 Am. Rep. 210.

Supplementing written contract by proof of collateral oral agreement. *Ann. Cas. 1914A, 454.*

Admissibility of parol evidence to explain or modify fire insurance contract. *Ann. Cas. 1914C, 59.*

Admissibility of parol evidence to explain interlineations or alterations made before execution of written instrument. *Ann. Cas. 1913C, 344.*

Admissibility of evidence extrinsic to lease to show agreement by landlord to repair. *Ann. Cas. 1913A, 37.*

§ 7875.

In an action by an engineer for injuries received by jumping from his engine to

avoid a collision, where the language of the defendant company's rules, relative to the operation of its trains under the block signal system, is plain and its meaning apparent, it is the duty of the court to declare that meaning and not leave it to the speculation of the jury. *Lynes v. Northern Pac. Ry. Co., 43 Mont. 317, 330, Ann. Cas. 1912C, 183, 117 Pac. 81.*

§ 7876.

In the construction of a statute, the intention of the legislature is to be pursued, if possible. *Lerch v. Missoula Brick & Tile Co., 45 Mont. 314, 319, Ann. Cas. 1914A, 346, 123 Pac. 25.*

In construing a contract, the admission of evidence, which tends to place the trial court in the position of the parties whose language is to be interpreted, is fully warranted under this and section 7877, post. *Rairden v. Hedrick, 46 Mont. 510, 516, 129 Pac. 498.*

Editorial Notes.

Construction and effect of constitutional or statutory prohibition against long leases of agricultural lands. *Ann. Cas. 1914A, 349.*

Repayment clauses in contracts, which shall prevail. 60 Am. St. Rep. 93.

§ 7877.

Effect of writing. See ante, § 5018.

Placing court in position of parties. See note ante, § 7876.

Contract is restricted to its evident object. See ante, § 5037.

Varying written instrument by parole. See note ante, § 7873.

Curing erroneous admission of evidence. See note ante, § 5010.

Applied where letters were relied upon as constituting a contract of employment. *Edwards v. Plains L. & W. Co., 49 Mont. 535, 544, 143 Pac. 962.*

In arriving at the intent of parties to a stipulation, the circumstances under which the stipulation was made, its subject matter, and the parties to it may be considered. The rules applicable to the construction of contracts, generally, control in interpreting stipulations. *Murphy v. Stone & Webster E. Corp., 44 Mont. 146, 149, Ann. Cas. 1913A, 1334, 119 Pac. 717.*

To aid the construction of a bill of sale, the circumstances under which it was made may be shown, and in doing this, conversations prior to the sale about the subject matter thereof, and not in conflict with the terms of the bill of sale, may be considered. *Sutherland v. Green, 49 Mont. 379, 384, 142 Pac. 636.*

Editorial Notes.

Waiver of right to remove cause from state to federal court. *Ann. Cas. 1913A, 1337.*

§ 7886.

Each party must prove his own affirmative allegations. See post, § 7972.

If one asserts himself to be the owner of the right to use waters claimed by him, the burden is on him to prove it. *Smith v. Duff*, 39 Mont. 374, 378, 133 Am. St. Rep. 582, 102 Pac. 981.

Where the allegation of nonpayment in a counterclaim is necessary to state a cause of action, it is material, and, being deemed denied, it must be proved, the burden resting upon the defendant. *Yancey v. Northern Pac. Ry. Co.*, 42 Mont. 342, 349, 112 Pac. 533.

§ 7887.

Deduction is evidence of past transactions, when. See ante, § 7867.

What prevails, where there is a conflict between titles of the codes. See ante, § 3555.

When part of transaction is proved, the whole is admissible. See ante, § 7871.

Subdivision 5 of this section, being a general statute, applicable to all cases civil and criminal, must, if there be any conflict, yield to section 6472, ante, a special statute, applicable only to the subject, limitations of actions. *Monidah Trust v. Kemper*, 44 Mont. 1, 6, Ann. Cas. 1912D, 1326, 118 Pac. 811.

The determination of who is an "intimate acquaintance" must be left in every case to the trial court, its discretion in the matter not being subject to review except in cases of clear abuse of it. *State v. Penna*, 35 Mont. 541, 90 Pac. 787.

In a suit to have the executor and heirs of the plaintiff's co-owner in a mining claim declared trustees for his benefit, declarations made by the decedent, after issuance of patent, that the plaintiff was still the owner of an interest in the claim, when in fact his name had been omitted from the patent, and evidence that the decedent at one time joined with the plaintiff in a lease of the property, are admissible in evidence. *Delmoe v. Long*, 35 Mont. 154, 88 Pac. 778.

"Declarations" to be used as evidence against a party are classed in books on evidence under the head of "Admissions." *Smith v. Whittier*, 95 Cal. 279, 296, 30 Pac. 529.

Application of the second subdivision in a will contest. *Murphy v. Nett*, 47 Mont. 38, 55, 130 Pac. 451.

A plaintiff may offer in evidence an admission made by the defendant in his verified answer without offering the entire answer, and, by so doing, he is not estopped from denying or disproving statements contained in the pleading. *Johnson v. Butte etc. Copper Co.*, 41 Mont. 158, 167, 48 L. R. A. (N. S.) 938, 108 Pac. 1057.

The admission of a county assessor, implied by his listing a strip of land that has been used as a public highway, is not an admission by the city or the public that the strip is not a highway, because he has nothing to do with the control of public highways, and cannot thus admit away the rights of the public. *Lockey v. City of Bozeman*, 42 Mont. 387, 398, 113 Pac. 286.

Where parties allege matters of fact in their pleadings, these pleadings may be offered in evidence against such parties as admissions of the facts so alleged. Such written statements are admissible on the same principle as oral admissions. *Johnson v. Butte etc. Copper Co.*, 41 Mont. 158, 165, 48 L. R. A. (N. S.) 938, 108 Pac. 1057.

The provision in the fourth subdivision of this section, relative to the admissibility of dying declarations, is simply declaratory of the common law, and has generally been held to be sufficiently broad to comprise the facts and circumstances of the killing, and such other facts and circumstances immediately surrounding and attending it, as properly form a part of the *res gestae*. *State v. Crean*, 43 Mont. 47, 58, Ann. Cas. 1912C, 424, 114 Pac. 603.

Where the stenographer who took the testimony of a witness, since deceased, has died before the testimony is sought to be used, and no one can be found who can read the notes or speak as to the correctness of them or of the transcript, or to the fact that the transcript embodies the testimony as it was given at a former hearing, the case is not brought within the rule of this section. *Pew v. Johnson*, 35 Mont. 181, 88 Pac. 770.

If, at the time of a second trial, it appears that a witness had been examined in a former controversy over the same subject matter between the same parties, and is, at the time, out of the jurisdiction, notes of his testimony given on the former trial are competent evidence and should be admitted. *Mette & Kanne D. Co. v. Lowrey*, 39 Mont. 124, 132, 101 Pac. 966.

Applied, the court permitting a stenographer to rehearse the testimony of a deceased witness. *O'Rourke v. Grand Opera House Co.*, 47 Mont. 459, 470, 133 Pac. 965.

In a homicide case, in which the defense of insanity is set up, testimony by non-expert witnesses is limited to those who have an intimate acquaintance with the accused, and they are required to state the facts upon which their opinions are founded. Acquaintanceship acquired by newspaper reporters, acquired during an interview with the accused, does not qualify them to give an opinion as to his sanity. *State v. Penna*, 35 Mont. 540, 90 Pac. 787.

The last clause of the ninth subdivision of this section means that an expert wit-

ness may give his opinion upon, or about, a question of science, art or trade. *Copenhaver v. Northern Pac. Ry. Co.*, 42 Mont. 453, 465, 113 Pac. 467.

Persons having special knowledge may testify as to the habits, conduct and actions of cattle, under certain conditions. *State v. Foley*, 44 Mont. 311, 316, 120 Pac. 225.

A witness, having qualified, may be permitted to state his opinion that the defendant was insane. *State v. Leakey*, 44 Mont. 354, 368, 120 Pac. 234.

Whether a rope, without a chain attachment, is an unsafe appliance for hoisting timbers in a mine is not a proper subject for opinion evidence. It is appropriate for the jury to draw its inferences as to such question after hearing evidence of the facts. *Cummings v. Reins Copper Co.*, 40 Mont. 599, 621, 107 Pac. 904.

A witness may testify as to whether certain beef was that of animals killed and properly bled, where he shows, upon his preliminary examination, that he is qualified. *State v. Keeland*, 39 Mont. 506, 516, 104 Pac. 513.

Editorial Notes.

Admissibility, as dying declaration, of statement respecting provocation for defendant's act. *Ann. Cas. 1912C, 429.*

Admissibility of evidence of condition before and after accident of property whose defects are alleged to have caused injury. 32 L. R. A. (N. S.) 1084.

Admissions and declarations of agents, when evidence against principal. 53 Am. Dec. 773.

Probative force of admission by party of fault or responsibility for accident. 15 L. R. A. (N. S.) 1096.

Declarations of former owner of chattel or chose in action, when admissible against party claiming under him. 42 Am. Dec. 80.

Declarations of agents of corporations. 14 Am. Dec. 632.

Competency of admission or declaration of officer of corporation as evidence against corporation. *Ann. Cas. 1912C, 109.*

Declarations of vendor, when evidence against his vendee to show fraud. 42 Am. Dec. 631.

Declarations of a party, when admissible in his favor. 93 Am. Dec. 279.

Declarations of former owner of land as evidence against their successors in title. 134 Am. St. Rep. 610.

Declaration or admission of grantor of personalty made while owner thereof as evidence against grantee. *Ann. Cas. 1912C, 1210.*

Declarations by vendor made out of court as to his purpose in making

a conveyance or transfer attacked as fraudulent against creditors. 41 L. R. A. (N. S.) 1.

Accomplice, convicting on the testimony of. 71 Am. Dec. 671; 34 Am. Rep. 408; 98 Am. St. Rep. 158.

Declarations of one upon whom an abortion is committed. 35 L. R. A. (N. S.) 1084.

Evidence at former trial, admissibility of in civil cases. 91 Am. St. Rep. 192.

Proof, by person who heard testimony, of admissions or contradictory statements by witness on former trial. *Ann. Cas. 1913B, 97.*

Absent witnesses, testimony of, when admissible. 61 Am. St. Rep. 886.

Competency in criminal cases of former testimony of absent witness. *Ann. Cas. 1913C, 464;* 1 *Ann. Cas. 471;* 13 *Ann. Cas. 973.*

Testimony on preliminary examination of witnesses not available at time of trial. 25 L. R. A. (N. S.) 868.

Testimony of accused at coroner's inquest. 70 L. R. A. 33; 33 L. R. A. (N. S.) 465.

Admissibility of former deposition or testimony of witness who has since become mentally incompetent to testify. *Ann. Cas. 1914B, 284.*

Forgetfulness of facts as ground for admission of former testimony of witness. *Ann. Cas. 1914C, 575.*

Opinions of nonexperts. 19 Am. Rep. 410; 30 Am. St. Rep. 38.

Opinion as to probable effect if the parties had acted in a different manner. 71 Am. Dec. 538.

Admissibility of opinion of witness as to amount of damages to realty. *Ann. Cas. 1912A, 191.*

Admissibility in evidence of calculations by witness from figures in evidence. *Ann. Cas. 1912D, 1353.*

Admissibility of opinion of witness as to whether conduct of certain person was "careless," "reckless" or "negligent." *Ann. Cas. 1913C, 1077.*

Handwriting, comparison of. 6 Am. Dec. 171.

Proof of facsimile signatures by comparison. *Ann. Cas. 1912B, 417.*

Competency of handwriting as standard for comparison. 63 L. R. A. 428.

Qualification of witness to testify as expert as resting in discretion of trial court. *Ann. Cas. 1912D, 817.*

Expert, hypothetical questions which may be put to. 53 Am. Rep. 307; 39 L. R. A. 313; 29 L. R. A. (N. S.) 537.

Necessity that expert witness state facts upon which his opinion is based. 20 *Ann. Cas. 883.*

Competency of abstract question in examination of expert witness. 20 Ann. Cas. 207.

Necessity for calling subscribing witness to prove attested writing. 35 L. R. A. 321.

Evidence admissible to show race to which person belongs. Ann. Cas. 1914A, 461.

Whether hearsay evidence as to pedigree must be confined to ancient facts. Ann. Cas. 1914A, 822.

Evidence of specific instances to prove character. 14 L. R. A. (N. S.) 690; 20 L. R. A. 614.

Other offenses evidence of, when admissible. 44 Am. Rep. 299; 105 Am. St. Rep. 976; 62 L. R. A. 194.

Proof of other offenses in prosecution for violation of liquor law. 18 Ann. Cas. 846.

Admissibility, to prove motive for crime, of evidence tending to prove other crimes against defendant. 7 Ann. Cas. 66.

Evidence of good character for the purpose of creating a doubt of defendant's guilt. 103 Am. St. Rep. 888.

Admissibility, in criminal prosecution, of evidence of threats by third person to commit crime charged against defendant. Ann. Cas. 1913A, 731.

Evidence of threats of accused or of person injured or killed. 17 L. R. A. 654.

Admissibility in evidence of undenied accusation of crime. Ann. Cas. 1913C, 240; 4 Ann. Cas. 1042; 12 Ann. Cas. 875; 25 L. R. A. (N. S.) 543; 42 L. R. A. (N. S.) 890.

§ 7888.

A court will not take judicial notice of the holding of a local option election. *State v. O'Brien*, 35 Mont. 500, 90 Pac. 514.

Judicial notice cannot be taken of the solvency of a litigant or the condition of his property. *State v. Clements*, 37 Mont. 103, 95 Pac. 845.

The matters enumerated in this section of which courts take judicial notice cannot be enlarged or diminished by judicial construction. They cannot assume that an ore-crushing machine is dangerous. *Ma-*

sich v. American Smelting etc. Co., 44 Mont. 36, 46, 118 Pac. 764.

The supreme court may take judicial notice of the action of a district court in refusing to surrender jurisdiction of a case to a federal court, but it does not follow that the supreme court must necessarily conclude that the district court properly assumed jurisdiction. *Golden v. Northern Pac. Ry. Co.*, 39 Mont. 435, 447, 18 Ann. Cas. 886, 34 L. R. A. (N. S.) 1154, 104 Pac. 549.

A court will take judicial notice of the laws of nature, but not that the destruction of the sight of one eye necessarily affects, injuriously, the sight of the other. *Gordon v. Northern Pac. Ry. Co.*, 39 Mont. 571, 579, 18 Ann. Cas. 583, 104 Pac. 679.

Courts take judicial notice of the fact that during a certain year a city was a municipal corporation existing under the laws of this state, and was the county seat of a certain county. *Drew v. City of Butte*, 44 Mont. 124, 126, 119 Pac. 279.

Judicial notice is not taken of the different classes of railroad tickets. *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 56, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

Editorial Notes.

Judicial notice. 89 Am. Dec. 663.

Judicial notice, laws, proof of, when necessary and how to be made. 11 Am. Dec. 780.

Judicial notice of what liquors are intoxicating. 12 Am. St. Rep. 353; 20 L. R. A. 648; 19 L. R. A. (N. S.) 848.

Judicial notice of boundaries and localities. 82 Am. St. Rep. 439.

Judicial notice of usage or custom. Ann. Cas. 1912A, 397; 12 Ann. Cas. 430.

Judicial notice of proceedings in other causes. Ann. Cas. 1913A, 140; 12 Ann. Cas. 537.

Judicial notice of geographical facts. 12 Ann. Cas. 927.

Judicial notice of municipal ordinances. Ann. Cas. 1914C, 1232.

Judicial notice that beer is intoxicating. Ann. Cas. 1914C, 874.

Judicial notice of mortality tables. Ann. Cas. 1914C, 685.

Judicial notice of foreign laws. 67 L. R. A. 33.

§ 7891. Persons Disqualified as Witnesses.

The following persons cannot be witnesses:

1. Those who are of unsound mind at the time of their production for examination.

2. Children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted against an executor or administrator upon a claim or demand against the estate of a deceased person, as to the facts of direct transactions or oral communications between the proposed witness and the deceased, excepting when the executor or administrator first introduces evidences thereof, or when it appears to the court that without the testimony of the witness, injustice will be done.

4. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted against any person or corporation, as to the facts of direct transaction or oral communication between the proposed witness and the deceased or deceased agent, of such person or corporation, and between such proposed witness and any deceased officer of such corporation. [Amendment approved February 28, 1913; Laws 1913, p. 57.]

Questions of law addressed to the court. See post, § 8055.

This section was adopted from the code of California, but the construction given it by the courts of that state does not seem reasonable, and, therefore, will not be followed in this state. *Delmoe v. Long*, 35 Mont. 153, 88 Pac. 778.

The words "claim" and "demand" are used in this section in their broad, comprehensive sense, and apply to all sorts of causes of action against the estates of decedents, whether for money claims or for property which would belong to the estate, except for the establishment of the claim or demand. *Delmoe v. Long*, 35 Mont. 152, 88 Pac. 778.

The plaintiff, in a suit to obtain a decree declaring the executor and heirs of the estate of the plaintiff's alleged co-owner in a mining claim trustees for his benefit of an undivided interest therein is incompetent to testify as to conversations had between him and the decedent pertaining to the property and its title. *Delmoe v. Long*, 35 Mont. 149, 88 Pac. 778.

Before the confession of a defendant is admitted in evidence, he has a right to show what his mental condition was at the time the confession was made. He is entitled to show that he was of unsound mind and, therefore, not a competent witness against himself, and that the confession should, consequently, be excluded. *State v. Berberick*, 38 Mont. 423, 447, 16 Ann. Cas. 1077, 100 Pac. 209.

Editorial Notes.

Incompetency of witnesses through insanity, intoxication or absence of memory. 35 Am. Rep. 291.

Competency of insane person as witness. Ann. Cas. 1913E, 323; 37 L. R. A. 423; 39 L. R. A. 265.

Competency and propriety as witness of attorney trying his own case. Ann. Cas. 1913B, 711.

Competency of coparty of decedent's representative to testify as to trans-

action with decedent. 17 Ann. Cas. 216.

Competency of interested witness to testify as to transactions with deceased in which he did not participate. 29 L. R. A. (N. S.) 1179; 42 L. R. A. (N. S.) 320.

§ 7892.

Communications made to an attorney, while acting for both parties, do not come within the prohibition of the second subdivision of this section, when a controversy arises as to the matter about which he has thus been the common adviser. *Lenahan v. Casey*, 46 Mont. 367, 378, 128 Pac. 601.

Editorial Notes.

Husband and wife, when may be permitted to testify as to matters criminalizing each other. 27 Am. Dec. 377; 106 Am. St. Rep. 763; 2 L. R. A. (N. S.) 862; 22 L. R. A. (N. S.) 240; 41 L. R. A. (N. S.) 1213.

Husband and wife, when may testify against each other. 24 Am. St. Rep. 663.

Competency at common law of one spouse to testify for or against co-defendant of other spouse. 4 Ann. Cas. 17.

Physicians, when may not testify. 17 Am. St. Rep. 565.

Rule of privileged communications as applicable to physician performing autopsy. Ann. Cas. 1913C, 689.

Privileged communications, attorneys, what may not testify to. 36 Am. Rep. 631; 66 Am. St. Rep. 213.

Necessity that communication to attorney, to be privileged, be in regard to subject matter of employment. 4 Ann. Cas. 531.

Privileged communications between attorney and client. Ann. Cas. 1913A, 3.

Communications between attorney and client in regard to testamentary

matters as privileged. *Ann. Cas.* 1913A, 56.

Right of personal representative, heir or next of kin of party to waive privileged communication. *Ann. Cas.* 1913A, 100.

§ 7906.

Proof of the written law of another state must be made in compliance with the methods prescribed in this section and in section 7907, post. *Ridpath v. Heller*, 46 Mont. 586, 590, 129 Pac. 1054.

§ 7907.

Proof of written law of sister state. See note ante, § 7906.

§ 7908.

The unwritten law of a sister state may be proved by the published reports of the decisions of its courts, or by the oral testimony of witnesses skilled in the subject. *Ridpath v. Heller*, 46 Mont. 586, 590, 129 Pac. 1054.

§ 7911.

A judicial record of a sister state is not entitled to be admitted in evidence in this state in the absence of a certificate that the attestation is "in due form." *Adams v. Stenehjelm*, 50 Mont. 232, 146 Pac. 1103.

The phrase, "in due form," means in the form prescribed by the law or practice of the state from which the record comes. It is for the judge of that state to determine whether the attestation of the clerk is in due form and to evidence his conclusion by his certificate, and it is to his certificate alone that the court of this state must look to ascertain whether what purports to be a certificate by the clerk is such under the laws of the state where it was made. *Adams v. Stenehjelm*, 50 Mont. 232, 146 Pac. 1103.

§ 7914.

A final judgment is conclusive, but a trial court has the power to grant a rehearing on a motion. Its decision in such a case does not have the same force as a judgment finally settling the controversy. *State (ex rel. Working) v. District Court*, 50 Mont. 441, 147 Pac. 614.

One not a party to a judgment is not bound thereby. *Conrow v. Huffine*, 48 Mont. 437, 447, 138 Pac. 1094.

Editorial Notes.

Conclusiveness of judgments in other actions involving the same question. 38 Am. Rep. 778.

Conclusiveness of judgments, elements necessary to in another action. 8 Am. St. Rep. 229.

Conclusiveness of adjudications on demurrer. 44 Am. St. Rep. 566.

Warrantors, when bound by judgments against grantees. 43 Am. Dec. 569.

Judgments against principals, when bind agents, sureties or indemnitors. 83 Am. Dec. 380; 33 Am. Rep. 802; 40 L. R. A. (N. S.) 698.

Judgments against tenant, when bind landlord. 95 Am. Dec. 473.

Judgments against tenant, effect of as res judicata. 112 Am. St. Rep. 21.

Conclusiveness of judgments is restricted to the party in the capacity in which he sued or defended. 7 Am. St. Rep. 175.

Conclusiveness of judgments against holders of unrecorded deeds. 31 Am. St. Rep. 217.

Conclusiveness against purchaser of land of judgment against vendor brought after purchase. 3 Ann. Cas. 339.

Person not a party or privy conducting defense. 37 L. R. A. 963.

Conclusiveness in an action of account as a bar to subsequent actions for items omitted. 78 Am. Dec. 769.

Conclusiveness of judgments, what facts are not res judicata though apparently found by the court. 96 Am. Dec. 775.

Conclusiveness of judgment, proof that matter is res judicata. 44 Am. St. Rep. 562.

Conclusive effect of judgment on which action to set aside conveyance as fraudulent is based. 67 L. R. A. 593.

Conclusiveness of judgments, instances of. 14 Am. St. Rep. 250; 15 Am. St. Rep. 142.

Judgments in rem and their effect as res judicata. 75 Am. Dec. 720.

§ 7917.

Settlement of water rights in one action. See note ante, § 4852.

What may be implied from final decree. See note ante, § 6701.

Where the rights of the parties defendant in a water right suit are not, as between themselves, presented to the court by the pleadings for determination, the decree will not estop them from having such rights determined in a subsequent case. *Sloan v. Byers*, 37 Mont. 514, 97 Pac. 855.

Where defendants were enjoined in a suit over water rights, and the court necessarily determined that certain waters existed, evidence to the contrary is inadmissible in a subsequent suit, until a change in conditions has been shown. *Howell v. Bent*, 48 Mont. 268, 272, 137 Pac. 49.

§ 7919.

Awarding custody of child, brought from another state, after divorce. See note ante, § 3678.

Editorial Notes.

Foreign judgments, effect of. 7 Am. Dec. 324; 94 Am. St. Rep. 532.

Foreign judgments, whether merge the cause of action. 38 Am. Rep. 667.

Foreign judgments in rem. 94 Am. St. Rep. 550.

Judgments of sister states, effect of. 2 Am. Dec. 42; 26 Am. Dec. 27; 103 Am. St. Rep. 304.

Unfavorable judgment in action against joint tort-feasor in one state as bar to action against other tort-feasor in another state. Ann. Cas. 1913E, 882.

Foreign judgments in rem. 20 L. R. A. 668; 32 L. R. A. 236.

Right to resist sister state judgment on ground of fraud. 32 L. R. A. (N. S.) 905.

§ 7922.

Vacation of decree of divorce against insane husband. See note post, § 6589.

§ 7924.

Construed, together with section 906 of the United States Revised Statutes, in considering proof of the corporate existence of a foreign corporation. Milwaukee Gold etc. Co. v. Gordon, 37 Mont. 218, 95 Pac. 995.

Under the ninth subdivision of this section, a certified copy of a copy is not admissible. The best evidence is a certified copy of the original by the officer having it in custody. Stephens v. Nacey, 49 Mont. 230, 246, 141 Pac. 649.

Certified copies of the records of the county commissioners, showing the result of a local option election, together with a certified copy of the affidavit of the publisher of the newspaper giving notice of the election, made by the county clerk, are properly admitted in evidence on the trial of one charged with an unlawful sale of liquor. State v. O'Brien, 35 Mont. 482, 499, 10 Ann. Cas. 1006, 90 Pac. 514.

It is error to admit in evidence, against objection, the copy of a copy of the plat of a townsite, it not being the best evidence; but where it appears that a certified copy of the original, by the officer having it in charge, could easily be supplied, and it does not appear that prejudice was wrought by the use of the copy admitted, the judgment will not be reversed because of such error. Stephens v. Nacey, 49 Mont. 230, 246, 141 Pac. 649.

§ 7925.

This section refers to a public record of a private writing within this state, not to public records of other states. Milwaukee Gold etc. Co. v. Gordon, 37 Mont. 218, 95 Pac. 995.

§ 7926.

In a prosecution for statutory rape, where the age of the prosecutrix is in question, a public record required to be kept by law, such as the census of a school that the prosecutrix had attended, is prima facie evidence of her age. State v. Vinn, 50 Mont. 27, 144 Pac. 772.

§ 7931.

In ejectment to recover a mining claim, a certificate that does not disclose that the plaintiff made a purchase or that he is entitled to a patent is valueless as evidence, but its admission is error without prejudice where the plaintiff's title has been amply proved by other evidence. Consolidated etc. Min. Co. v. Struthers, 41 Mont. 565, 575, 111 Pac. 152.

§ 7940.

Tables showing the effect of experiments made by the manufacturer of air-brakes, with which a railroad train is equipped, are admissible for the purpose of showing their available power to control the movements of trains of different tonnage under varying conditions. Lynes v. Northern Pac. Ry. Co., 43 Mont. 318, 329, Ann. Cas. 1912C, 183, 117 Pac. 81.

Editorial Notes.

Admissibility is evidence of tables compiled from and showing results of experiments. Ann. Cas. 1912C, 189.

Scientific and medical books, whether may be read as evidence. 59 Am. Dec. 180; 51 Am. Rep. 680; 19 Ann. Cas. 1002; 40 L. R. A. 553.

Admissibility in evidence against third person of books, reports and the like, other than books of account. 125 Am. St. Rep. 841.

Railroad train-sheet as evidence. Ann. Cas. 1912B, 372.

§ 7941.

Inadmissibility of copies. See note ante, § 7872.

§ 7956.

Verdict founded upon inference. See note post, § 7959.

§ 7957.

See note post, § 7959.

§ 7959.

After having correctly defined an inference, and stating that it must be founded upon a fact legally proved, it is not error for the court to refuse to instruct the jury that an "inference cannot be founded upon another inference, or upon facts inferred from other facts legally proved." *State v. Blaine*, 45 Mont. 482, 485, 124 Pac. 516.

A verdict may be founded upon an inference; thus, if a passenger of one railroad company is injured at the depot platform of another company, the defendant, by stepping into an uncovered water hole in the platform, an inference that the employees omitted to recover the hole is justified, and authorizes a recovery against the latter company. *Jenkins v. Northern Pac. Ry. Co.*, 44 Mont. 295, 303, 119 Pac. 794.

§ 7961.

Presumption as to railway brakeman's authority to eject trespassers from freight train. See note post, § 7962.

As between the parties, or their successors in interest by a subsequent title, the recitals in a written instrument are conclusively presumed to be true, except the recital of a consideration; and, under section 7962, post, the recital of a consideration is deemed *prima facie* to be true. *Dubbels v. Thompson*, 49 Mont. 550, 557, 143 Pac. 986.

An instruction that, when an unlawful act is shown to have been deliberately committed for the purpose of injuring another, it is presumed to have been committed with a malicious and guilty intent, and that the law presumes that a person intends the ordinary consequences of his act, should not be given in a prosecution for assault in the first degree. Such an instruction may be properly given in a case where the charge and facts warrant, but when a defendant is on trial for a crime involving specific intent as the gist of the offense, it might mislead the jury. *State v. Schaefer*, 35 Mont. 221, 88 Pac. 792.

§ 7962.

Proof of jurisdictional facts in a justice's court. See note ante, § 7071.

If a railroad engine runs against a boy on the track, and the engineer, in an action brought for personal injuries, is practically charged with manslaughter, the presumption is that he is innocent of that crime. *Haddox v. Northern Pac. Ry. Co.*, 43 Mont. 8, 17, 113 Pac. 1119.

In an action to recover for personal injuries to a child, the burden of alleging and proving contributory negligence is upon the defendant, in the first instance, since there is a presumption of law that the plaintiff exercised ordinary care. *Harrington v. Butte etc. Ry. Co.*, 37 Mont. 169, 172, 16 L. R. A. (N. S.) 395, 95 Pac. 8.

Under the fourth subdivision of this section, the law presumes that a person exercises ordinary care for his own safety. *Meehan v. Great Northern Ry. Co.*, 43 Mont. 72, 80, 114 Pac. 781.

A person's possession of cattle is *prima facie* evidence that he owns them. *Kerr v. Blaine*, 49 Mont. 602, 607, 144 Pac. 566.

The presumptions contained in the eighth, eleventh and twelfth subdivisions of this section, relative to the possession and ownership of property, may be reinforced by competent evidence; such as evidence consisting of a note given by the apparent owner of cattle, and a chattel mortgage to secure the debt evidenced by it, which latter remained of record uncanceled for more than a month at the time a defendant claimed to have bought the livestock. *Cuerth v. Arbogast*, 48 Mont. 209, 216, 136 Pac. 383.

Error cannot be predicated upon the action of the court in refusing to include, in an instruction, the provisions of the eighth, eleventh and twelfth subdivisions of this section. It is not commendable practice to submit to jurors abstract rules of law, though they are correct. *Cuerth v. Arbogast*, 48 Mont. 209, 221, 136 Pac. 383.

Assuming that the supreme court should, in a proper case where a stay of proceedings has been ordered by the trial court, use the writ of mandamus to compel the requirement of security pending the motion for a new trial, the presumption must be indulged that the defendant regularly pursued his duty and that the order complained of was the result of the exercise of a wise discretion. *State v. Clements*, 37 Mont. 96, 100, 127 Am. St. Rep. 701, 94 Pac. 837.

Under the fifteenth subdivision of this section, the presumption is, when the sheriff receives a venire for service, that every man whose name appears upon it is competent for jury service. The defendant in a criminal case who interposes a challenge to the panel, on the ground that the sheriff failed to summon all of the jurors, may, therefore, rely on such presumption to establish a *prima facie* case to that extent. *State v. Groom*, 49 Mont. 354, 358, 141 Pac. 858.

The fifteenth subdivision of this section applied to the warden of the penitentiary. *Stephens v. Conley*, 48 Mont. 352, 364, 138 Pac. 189.

The presumptions found in the fifteenth and sixteenth subdivisions of this section do not relieve a party who alleges in his pleading that a judgment of a justice of the peace was "duly given or made," from establishing on the trial the facts concerning jurisdiction where such allegation is controverted. *Miller v. Miller*, 47 Mont. 150, 155, 131 Pac. 23.

Under the twenty-fourth subdivision of this section, defendants, to each of whom

copies of the summons and complaint were mailed at their known places of residence, are presumed to have had actual notice of the pendency of the action. *Smith v. Collis*, 42 Mont. 350, 369, Ann. Cas. 1912A, 1158, 112 Pac. 1070.

The presumption mentioned in the thirty-second subdivision of this section does not apply regardless of the nature of the thing or condition in question. It applies only to those conditions which, from their nature, must continue for some appreciable length of time. In *re Murphy's Estate*, 43 Mont. 353, 373, Ann. Cas. 1912C, 380, 116 Pac. 1004.

When lunacy or insanity, of a general, habitual or permanent nature is once shown to exist, it is presumed to continue until the presumption is overturned by countervailing evidence, because we know, from experience, that the condition usually continues; but such presumption does not apply to cases of intermittent or occasional insanity, as the idea of continuity is excluded. In *re Murphy's Estate*, 43 Mont. 353, 373, Ann. Cas. 1912C, 380, 116 Pac. 1004.

If lateral ditches are run from a canal toward the head of a swamp, the question whether the increase of flow in the canal is permanent is conjectural, and the presumption, "that a thing once proved to exist continues as long as is usual with things of that nature," embodied in the thirty-second subdivision of this section, cannot be indulged. *Smith v. Duff*, 39 Mont. 374, 392, 133 Am. St. Rep. 582, 102 Pac. 981.

It is a prima facie presumption that a railway brakeman on a freight train has authority, by virtue of his employment, to eject trespassers therefrom. In some states, however, the presumption is conclusive. *Golden v. Northern Pac. Ry. Co.*, 39 Mont. 435, 451, 18 Ann. Cas. 886, 34 L. R. A. (N. S.) 1154, 104 Pac. 549.

It is proper to charge the jury that one charged with crime is presumed to be innocent until his guilt is established beyond a reasonable doubt. *State v. Blaine*, 45 Mont. 482, 487, 124 Pac. 516.

Application of the presumption that the law has been obeyed, respecting the indorsement of a satisfaction of a chattel mortgage or the filing thereof. *Kerr v. Blaine*, 49 Mont. 602, 607, 144 Pac. 566.

Where a hodgecarrier, on a scaffold made wet by rain, steps on a mortar board, slips and throws out his hands so that they come in contact with wires charged with electricity, it cannot be said that his slipping was negligence per se. *Birsch v. Citizens' Electric Co.*, 36 Mont. 574, 581, 93 Pac. 940.

Where a plaintiff has brought an action for damages for injury to his private property, caused by the alleged negligence of the defendant, he cannot, after having made out a prima facie case by evidence

of the facts constituting the alleged negligence, invoke the rule *res ipsa loquitur*; the burden of proof is upon him. *Lyon v. Chicago M. & St. Paul Ry. Co.*, 50 Mont. 532, 148 Pac. 386. For former appeal, see 45 Mont. 33, 121 Pac. 886.

Where an undertaking, given for the release of personal property from attachment, recites that a levy has been made and the undertaking given to secure its release, the sureties are estopped to say, in action on the undertaking, that no levy was made. *Dackich v. Barich*, 37 Mont. 502, 97 Pac. 931.

Editorial Notes.

Presumption as to continuance of insanity. Ann. Cas. 1912C, 388.

Presumption that subsequent purchaser is a purchaser bona fide. 17 Am. St. Rep. 288.

Presumption, validity of statutes creating. 36 Am. St. Rep. 682.

Presumption with respect to alteration in writing. 86 Am. St. Rep. 129; 39 L. R. A. (N. S.) 100.

Validity of statute making certain facts prima facie evidence. Ann. Cas. 1912A, 465.

Distinction between presumption of law and presumption of fact. Ann. Cas. 1913B, 897.

Rebuttable presumptions as evidence. Ann. Cas. 1913E, 977; 3 Ann. Cas. 72.

Presumption as basis of presumption. 10 Ann. Cas. 1096.

Presumptions as to law of other state or country. 21 L. R. A. 471; 67 L. R. A. 33.

Presumption from marriage ceremony. 14 L. R. A. 540; 16 L. R. A. (N. S.) 98; 34 L. R. A. (N. S.) 940.

§ 7969.

Dealing with special agents. See note ante, § 5415.

The authority of an agent to sell real estate must be in writing. *Schaeffer v. Mutual Benefit Life Ins. Co.*, 38 Mont. 459, 465, 100 Pac. 225.

Editorial Notes.

Contracts, what within statute of frauds, because not to be performed within one year. 93 Am. Dec. 86; 43 Am. Rep. 42.

Agreements not to be performed within a year. 138 Am. St. Rep. 590.

Contract not to be performed within one year but terminable at option of parties, as within statute of frauds. Ann. Cas. 1912B, 731, 17 Ann. Cas. 207.

Validity within statute of frauds of contract which is capable of being performed by one party within year

- and is so performed. 13 Ann. Cas. 916.
- Oral contract for year's service to commence in futuro. 2 L. R. A. (N. S.) 738.
- Contracts for services which may but are not intended to be performed within a year. 15 L. R. A. (N. S.) 313.
- Third persons, promises for the benefit of. 3 Am. Dec. 305; 9 Am. Dec. 155; 35 Am. St. Rep. 331; 71 Am. St. Rep. 178.
- Promise to pay the debt of another. 5 Am. Dec. 321; 46 Am. Rep. 296.
- Promises to pay the debt of another when need and when need not be in writing. 95 Am. Dec. 251.
- Indemnity, contracts of whether within statute of frauds. 42 Am. St. Rep. 186; Ann. Cas. 1912A, 884.
- What, within the meaning of the statute of frauds, is a contract to answer for or pay the debt of another. 126 Am. St. Rep. 487.
- Promise to pay debt of another out of debtor's property as within statute of frauds. Ann. Cas. 1912B, 446.
- Promise to pay debt of another in consideration of relinquishment of lien by promises as within statute of frauds. Ann. Cas. 1913D, 319.
- Contemporary promise of one person to pay where benefit inures to another as a promise to answer for default of another. 15 L. R. A. (N. S.) 214; 32 L. R. A. (N. S.) 598.
- Whether oral promise is original or collateral as depending on intention of parties. Ann. Cas. 1914A, 490.
- Contracts for sales of goods, when within statute of frauds. 9 Am. Dec. 188.
- Acceptance and delivery of goods to satisfy statute of frauds. 49 Am. Dec. 325; 37 Am. Rep. 16; 96 Am. St. Rep. 215.
- Trees growing, sale of, whether within statute of frauds. 86 Am. Dec. 182; 17 Am. Rep. 595.
- Contracts for the purchase of property not then in existence, whether within statute of frauds. 54 Am. Rep. 164.
- Distinction between sales and contracts for work and labor. 14 L. R. A. 230; 30 L. R. A. (N. S.) 319.
- Contracts relating to real estate. 17 Am. Dec. 58.
- Contracts for the sale of land, what amount to within the meaning of statute of frauds. 102 Am. St. Rep. 230.
- Parol exchange of lands as affected by statute of frauds. Ann. Cas. 1912A, 308.
- Oral agreement by vendor to make title to land good as within statute of frauds. Ann. Cas. 1913D, 1239.
- Possession taken by vendee in parol contract for sale of land without knowledge or consent of vendor and not in pursuance of contract as part performance satisfying statute of frauds. Ann. Cas. 1913E, 510.
- Parol partnership for dealing in lands. 16 L. R. A. 745; 4 L. R. A. (N. S.) 427; 33 L. R. A. (N. S.) 883.
- Memorandum letters, when constitute parts of. 7 Am. Dec. 288; 42 Am. Rep. 347.
- Memorandum, writing of may be in any kind of letters, and in pencil. 7 Am. Dec. 288.
- Auction sales, memorandum of sufficient to satisfy statute of frauds. 13 Am. Dec. 398.
- Memoranda, what constitute and by whom must be signed. 47 Am. Rep. 532; 22 L. R. A. 297; 28 L. R. A. (N. S.) 680.
- Consideration of a contract, when sufficiently expressed. 60 Am. St. Rep. 432.
- Recital "for value received" as sufficient statement of consideration in contract within statute of frauds. Ann. Cas. 1912A, 1242.
- Sufficiency of signature by one party only to memorandum required by statute of frauds. Ann. Cas. 1912C, 416; 3 Ann. Cas. 1036; 13 Ann. Cas. 1121.
- Sufficiency of printed signature to memorandum within statute of frauds. Ann. Cas. 1913B, 663.
- Necessity of written acceptance of written offer to constitute sufficient memorandum under statute of frauds. Ann. Cas. 1913A, 1041.
- Necessity of delivery of memorandum. Ann. Cas. 1914C, 267.
- Several writings as memorandum within statute. Ann. Cas. 1914C, 1010.

§ 7972.

Fraud in obtaining life insurance policy. See note ante, § 5570.

Position of contestant of probate of will. See note ante, § 7397.

Presumption of sanity. See note ante, § 7397.

The burden throughout is on him who has the affirmative of an issue. *De Sandro v. Missoula L. & W. Co.*, 48 Mont. 226, 237, 136 Pac. 711.

If one asserts himself to be the owner of the right to use waters claimed by him, the burden is on him to prove it. *Smith v. Duff*, 39 Mont. 374, 378, 133 Am. St. Rep. 582, 102 Pac. 981.

If a life insurance policy provides that the contract shall not become effective unless the first premium has been paid and the policy issued during the "continuance in good health" of the insured, and, upon suit being brought by the widow of the insured, and it being admitted that the first premium was paid, the plaintiff is entitled to judgment, in the absence of evidence tending to establish fraud relied on to avoid the contract; and the burden to show such fraud is on the defendant. *Pelican v. Mutual Life Ins. Co.*, 44 Mont. 277, 285, 288, 119 Pac. 778.

Editorial Notes.

Burden of proof, on whom rests. 23 Am. Rep. 308; 33 Am. Rep. 736; 37 Am. Rep. 148.

Burden of proof in fraudulent conveyances. 11 Am. St. Rep. 758.

Burden of proving fairness of transaction. Ann. Cas. 1912A, 704.

Burden of proving husband's debts on account of property received from wife. 56 L. R. A. 817.

Burden of proof as to undue influence respecting gifts inter vivos from parent to child. 35 L. R. A. (N. S.) 944.

Burden of proof as to bona fides of purchaser claiming against prior unrecorded conveyance or encumbrance. 36 L. R. A. (N. S.) 1124.

Burden of proof that accident arose out of and in course of employment under workmen's compensation act. Ann. Cas. 1913C, 4; Ann. Cas. 1914B, 498.

Burden of proof as to condonation in action for divorce. Ann. Cas. 1912C, 3.

Burden of proving malice in action for libel or slander where communication is privileged. Ann. Cas. 1913C, 1072.

Burden of proof of loss by reason of delay in presenting check for payment. Ann. Cas. 1913A, 1293.

Burden of proof in action against officer for failure to execute or return process. Ann. Cas. 1912D, 732.

Rule that burden of proof is on bailee to explain loss of goods as applicable when bailee does not have exclusive possession. Ann. Cas. 1913D, 947.

Burden of proof of negligence on part of carrier of livestock. Ann. Cas. 1913E, 311.

Burden of proof as to when alteration or interlineation was made in deed. Ann. Cas. 1914B, 1090.

§ 7992.

An affidavit may be used to verify a pleading or paper required to be verified,

but it gives no evidentiary value to a paper not required to be verified. *State (ex rel. Wood) v. Board of Commissioners*, 49 Mont. 165, 171, 140 Pac. 728.

§ 7997.

Admissibility of affidavit taken in foreign country. See note ante, § 7446.

§ 8005.

Power to adjourn trial or proceeding may be restricted by statute. See note ante, § 7244.

§ 8010.

Parties to guardianship proceeding. See note ante, § 7764.

A deposition taken to be used in guardianship proceedings, to appoint a guardian for one claimed to be insane, is not admissible in evidence, where the question in issue is the mental condition of such alleged incompetent at the time of the execution of his will, prior to the guardianship proceedings; the controversy is not between the same parties and does not involve the same subject matter. In re *Murphy's Estate*, 43 Mont. 353, 375, Ann. Cas. 1912C, 380, 116 Pac. 1004.

Editorial Notes.

Admissibility of deposition against party taking it. Ann. Cas. 1913B, 1169.

Competency of deposition as determined by status of witness at time deposition is taken or at time it is offered in evidence. Ann. Cas. 1913C, 1064.

§ 8016.

An order excluding witnesses from the courtroom does apply to one who remained in the courtroom not knowing he would be called. *State v. McDonald (Mont.)*, 149 Pac. 279.

§ 8020.

The courts are not authorized to enlarge the provisions of this section. It establishes the law relative to the subject matter, and, in such a case, the common law is not applicable. *Marron v. Great Northern Ry. Co.*, 46 Mont. 593, 603, 129 Pac. 1055.

This section comprehends two classes of witnesses; the first class includes the witness whose memory can be refreshed by reference to memoranda; the second class includes the witness who does not retain any recollection of the particular facts recorded in the memoranda, even after he examines the entries that he made himself. The witness of the first class may refresh his memory, and, having

done so, may then testify independently of the memoranda; the witness of the second class may testify directly from the memoranda. *Marron v. Great Northern Ry. Co.*, 46 Mont. 593, 601, 129 Pac. 1055.

Where it becomes necessary for a witness to resort to memoranda, he will not be permitted to testify at all until proof of the following preliminary facts namely: That the entries were written by the witness himself, or under his direction; that the entries were written at the time the facts occurred, or at a time when the facts were fresh in the memory of the witness; and that the witness knew at the time the entries were made, that they correctly stated the facts. *Marron v. Great Northern Ry. Co.*, 46 Mont. 593, 602, 129 Pac. 1055.

To refresh his memory, a witness may properly have a recourse to a memorandum-book containing entries written by himself. *Cohen v. Clark*, 44 Mont. 151, 157, 119 Pac. 775.

A memorandum, fugitive in character, kept by a witness, but not intended as a record of his business transactions from day to day, is hearsay and not admissible in evidence, though he may use it to refresh his memory or to aid him in giving his testimony. *Columbus State Bank v. Erb*, 50 Mont. 442, 147 Pac. 617.

Where the testimony of a deceased witness, given on a former trial, was reported by a stenographer, who made a transcript of it, and who testifies that the transcript was an accurate translation of the original report, it is competent for him, when produced as a witness, to rehearse the evidence, either by using the transcript as a memorandum to refresh his memory, or, in case he has no independent recollection of the testimony, to testify from the transcript; but the court is technically in error in allowing him to testify from the transcript, without a previous showing that he has no independent recollection of the testimony. *O'Rourke v. Grand Opera House Co.*, 47 Mont. 459, 470, 133 Pac. 965.

If a witness does not recollect, and must resort to a memorandum, but cannot qualify, by testifying to the necessary preliminary facts, and, cannot, therefore, testify by its aid, or directly from it, the memorandum itself is inadmissible. *Marron v. Great Northern Ry. Co.*, 46 Mont. 593, 602, 129 Pac. 1055.

Editorial Notes.

Right of witness to refresh his memory from published statement or report made by him instead of from original memorandum. *Ann. Cas.* 1913B, 582.

§ 8021.

This section must be liberally construed. It permits a wide range for cross-examina-

tion, and courts should extend rather than restrict the right. *Cuerth v. Arbogast*, 48 Mont. 209, 215, 136 Pac. 383.

The right of cross-examination is a substantial one and may not be unduly restricted. It may extend not only to facts stated by the witness in his original examination, but to all other facts connected with them which tend to enlighten the jury upon the question in controversy. *State v. Biggs*, 45 Mont. 400, 404, 123 Pac. 410.

The right of cross-examination extends not only to facts stated by the witness in his original examination but to all other facts connected with them, which tend to enlighten the jury upon the question in controversy. The rule necessarily includes questions the purpose of which is to bring out facts illustrative of the motives, bias and interest of the witness, or as reflecting upon his capacity and memory; but the questioner has no right, under the guise of cross-examination, to go into the merits of his cause of action or defense. *Moss v. Goodhart*, 47 Mont. 257, 269, 131 Pac. 1071; *Shandy v. McDonald*, 38 Mont. 393, 398, 100 Pac. 203.

Inquiry well within bounds of legitimate cross-examination. *State v. Hanlon*, 38 Mont. 557, 575, 100 Pac. 1035.

Editorial Notes.

Cross-examination of the accused in criminal prosecutions. 38 Am. St. Rep. 895; 15 L. R. A. 669; 30 L. R. A. (N. S.) 846.

Limiting cross-examination of witness to scope of direct examination. 17 Ann. Cas. 4.

Extent to which cross-examination is permissible to show hostility or will of witness. *Ann. Cas.* 1914B, 537.

Failure to cross-examine witness as raising presumption against party. *Ann. Cas.* 1914A, 932.

§ 8022.

In a criminal case, where it appears that a witness called by the state, and the defendant are on terms of friendly intimacy, the state may, when necessary to protect its rights, cross-examine the witness as to inconsistent statements made by him. *State v. Willette*, 46 Mont. 326, 330, 127 Pac. 1013.

Editorial Notes.

Impeaching of witness by party calling. 60 Am. Dec. 749; *Ann. Cas.* 1914B, 1120; 21 L. R. A. 418.

Contradicting party's own witness by proving he has made statements different from his present testimony. 74 Am. Dec. 398; 21 L. R. A. 418.

§ 8024.

Evidence of particular wrongful acts is not admissible to impeach a witness.

State v. Jones, 48 Mont. 505, 516, 139 Pac. 441.

Editorial Notes.

Impeachment of witnesses. 15 Am. Dec. 96; 17 Am. Dec. 76.

Collateral and irrelevant matters, inquiry on for the purpose of discrediting witnesses. 88 Am. Dec. 321; 6 Ann. Cas. 715.

Impeaching witnesses by proving want of chastity. 53 Am. St. Rep. 479.

Impeaching by prior contradictory statements. 73 Am. Dec. 762.

Bias or credibility, evidence admissible to show. 82 Am. St. Rep. 25.

Whether former mere expression of opinion may be shown to discredit witness. Ann. Cas. 1914B, 112.

Method of proving conviction of crime to impeach defendant in criminal case as witness. Ann. Cas. 1914C, 256.

§ 8025.

Where the testimony of a witness on the trial of a case is at variance with his testimony previously given at a coroner's inquest, such portions of his testimony given at the inquest as contradict his testimony on the trial are admissible to show statements made by the witness inconsistent with his present testimony, if he denies having made such statements, or if recollection of them is disclaimed. *Westlake v. Keating Gold Min. Co.*, 48 Mont. 120, 136, 136 Pac. 38.

See, also, ante, § 8024.

§ 8027.

Illustration of admission of letters, after identification, as proper cross-examination. *Ross v. Saylor*, 39 Mont. 559, 568, 104 Pac. 864.

§ 8028.

This statute is the law of the state, and no matter what other courts have decided, in the absence of like statutes, the supreme court of this state is bound by its provisions. *State v. Paisley*, 36 Mont. 254, 92 Pac. 566.

The jury, in the first instance, are the exclusive judges of the credibility of a witness and of the weight to be given to his testimony. *Bowen v. Webb*, 37 Mont. 484, 97 Pac. 839.

Juries may not arbitrarily and capriciously disregard the testimony of witnesses, which is not only unimpeached but is supported by all the circumstances of the case. *Haddox v. Northern Pac. Ry. Co.*, 43 Mont. 8, 16, 113 Pac. 1119.

In civil actions, where the evidence is conflicting, a preponderance of the evidence is the least that will support a ver-

dict. *Flaherty v. Butte Elec. Ry. Co.*, 42 Mont. 89, 93, 111 Pac. 348.

In civil actions, where the evidence is not conflicting, the verdict must be in favor of the party who has the affirmative of the issue, and who has produced the uncontradicted evidence in support of it. *Flaherty v. Butte Elec. Ry. Co.*, 42 Mont. 89, 93, 111 Pac. 348.

Statements of declarations or admissions made by another are the weakest and least satisfactory character of evidence, in persuasive value, and should be received with great caution. *Escallier v. Great Northern Ry. Co.*, 46 Mont. 238, 248, Ann. Cas. 1914B, 468, 127 Pac. 458.

In any case, the court has a wide discretion as to the extent it should go in submitting specific instructions as to the interest or bias of witnesses; ordinarily, a general instruction embodying the provisions of section 7864, ante, is sufficient. *White v. Chicago etc. Ry. Co.*, 49 Mont. 419, 427, 143 Pac. 561.

A refusal to instruct that, "the oral admissions of a party are to be viewed with caution," is error, when. *McCrimmon v. Murray*, 43 Mont. 457, 471, 117 Pac. 73.

The jury should not be instructed in a homicide case that, if they are satisfied that any witness has knowingly and willfully testified falsely in any material matter, they have the right to reject the whole of this testimony, "unless on any point such testimony is corroborated by the facts and circumstances of the case or other credible evidence." *State v. Peña*, 35 Mont. 545, 90 Pac. 787.

An instruction in an action for conversion, "that fraud is never presumed but must be clearly and distinctly proven," is erroneous in requiring something more than a bare preponderance of the evidence. *Gehlert v. Quinn*, 35 Mont. 451, 457, 119 Am. St. Rep. 864, 90 Pac. 168.

On appeal from the judgment in a felony case, it will be presumed that the giving of an instruction in the language of this section, "that a witness false in one part of his testimony is to be distrusted in others," was warranted by the case as submitted. *State v. Connors*, 37 Mont. 15, 94 Pac. 199.

Such instruction is not erroneous for failure to insert the word "willfully" before the word "false," and the words "as to a material matter" after the word "testimony." *State v. Connors*, 37 Mont. 15, 94 Pac. 199.

Editorial Notes.

Jury, invasion by the court of the province of, what deemed to be. 14 Am. St. Rep. 36.

Instructions to jury to disregard evidence of witnesses who are competent to testify. 86 Am. Dec. 328.

Instructions to jury, what are proper subjects of. 72 Am. Dec. 538.

Instructions to jury, how to obtain and to review errors in giving or refusing. 99 Am. Dec. 118.

Reasonable doubt, what is and instructions concerning. 48 Am. St. Rep. 566.

Propriety of instruction defining reasonable doubt as doubt for which juror can give reason. 11 Ann. Cas. 1019; 16 L. R. A. (N. S.) 260.

Necessity that instruction that if jury believe witness has testified falsely in one particular they may disregard all his testimony, should include proviso that false testimony must have been given knowingly and willfully. Ann. Cas. 1912D, 1351.

Propriety of instruction that if jury do not believe testimony of witness they must deem him guilty of perjury. Ann. Cas. 1912D, 279.

As to effect of nonproduction of evidence. Ann. Cas. 1914A, 934.

§ 8030.

Impeachment of witness. See ante, §§ 8024, 8025.

On cross-examination, it is not permissible to ask a witness any question merely for the purpose of degrading and discrediting him, but he must answer as to a prior conviction for a felony; and a judgment will be reversed where questions asked of a witness in a criminal case were totally foreign to the matter before the court; where they could have no bearing whatever on the guilt of innocence of the defendant; and where they could subserve no purpose whatever, except to degrade and discredit the witness. *State v. Crowe*, 39 Mont. 174, 179, 18 Ann. Cas. 643, 102 Pac. 579.

Editorial Notes.

Privilege of witnesses as to incriminating testimony. 21 Am. Dec. 55; 75 Am. St. Rep. 318.

Privilege of witnesses, waiver of by voluntarily testifying in their own behalf. 19 Am. Rep. 348.

Crimination, cross-examination involving. 27 Am. Rep. 140.

Privilege of witness to refuse to testify on ground that testimony will subject him to civil action or be against his interests. Ann. Cas. 1912A, 386.

Right of person against whom witness is called to object to his testimony on ground that it may incriminate witness. Ann. Cas. 1913C, 1389.

Demand on accused in presence of jury to produce incriminating evidence as violation of constitutional privilege. Ann. Cas. 1912D, 261.

Power of court to demand production of books of private corporation by person whom they may incriminate. Ann. Cas. 1912D, 569.

§ 8031.

Right of witness to protection. See note ante, § 8030.

The court may protect a witness from a question, intended to insult and degrade him, by refusing to require him to answer. *State v. Biggs*, 45 Mont. 400, 404, 123 Pac. 410.

§ 8040.

The statement of an independent fact, not essential to the purpose of a compromise, and which is not to be regarded as a concession made for that purpose, is not excluded by this section, but is admissible in evidence. *Lenahan v. Casey*, 46 Mont. 367, 379, 128 Pac. 601.

§ 8042.

A mode for the perpetuation of testimony is provided by this section, and section 8048, post. *Sloan v. Byers*, 37 Mont. 513, 97 Pac. 855.

§ 8048.

A mode for the perpetuation of testimony is provided by this section and section 8042, ante. *Sloan v. Byers*, 37 Mont. 513, 97 Pac. 855.

§ 8054.

This and the following section are alike applicable to civil and criminal cases. *State v. Sherman*, 35 Mont. 512, 518, 119 Am. St. Rep. 869, 90 Pac. 981.

Editorial Notes.

Invasion by the court of the province of the jury, what deemed to be. 14 Am. St. Rep. 36.

Belief of defendant in truth of charge made against plaintiff as question of law or fact in action for malicious prosecution. Ann. Cas. 1912C, 1043.

Estoppel in pais as question of law or fact. Ann. Cas. 1912A, 1072.

Respective functions of court and jury with respect to question of proximate cause. Ann. Cas. 1913B, 351.

Whether employees are fellow-servants is question of law or fact. Ann. Cas. 1912D, 75.

Liability for collision between pedestrian and vehicle as question of law or fact. Ann. Cas. 1914A, 250.

What is mutual account as question for jury. Ann. Cas. 1913D, 820.

Negligent speed of train as question for jury. Ann. Cas. 1914B, 605.

§ 8055.

Admitting confession of insane defendant. See note ante, § 7891.

Under this section the jury has nothing to do with determining the admissibility of confessions in a homicide case; that

question is for the court. *State v. Sherman*, 35 Mont. 512, 518, 119 Am. St. Rep. 869, 90 Pac. 981.

This section seems to have been overlooked in *State v. Tighe*, 27 Mont. 327, 71 Pac. 3, and, in so far as the decision in that case conflicts with this section, it is not authority. *State v. Sherman*, 35 Mont. 519, 119 Am. St. Rep. 869, 90 Pac. 981.

COMMON LAW AND CODES.

§ 8060.

Applied to law of evidence. See note ante, § 8020.

Crown's prerogative respecting public debts. See note ante, § 3552.

Common law as rule of decision. See note ante, § 3552.

Rights of witnesses. See ante, §§ 8030 and 8031.

Impeachment of witnesses. See ante, §§ 8024 and 8025.

Pleading common counts. See note ante, § 6532.

Common-law actions for negligence may be changed so as to cover future happenings. *Cunningham v. Northwestern Imp. Co.*, 44 Mont. 180, 216, 119 Pac. 554.

The legislature may alter or repeal the common law, and many of its rules have been abolished. *Cunningham v. Northwestern Imp. Co.*, 44 Mont. 180, 216, 119 Pac. 554.

In this state, there is no action for money had and received, as such. There is no common law here, where the law is declared by the code. *Truro v. Passmore*, 38 Mont. 544, 549.

Editorial Notes.

What the "common law" includes. Ann. Cas. 1913E, 1222.

Extent of adoption of common law.

Ann. Cas. 1913E, 1232; 22 L. R. A. 501.

Adoption of common law in relation to crimes. Ann. Cas. 1913E, 1249.

§ 8061.

Applied to law of evidence. See note ante, § 8020.

Impeachment of witnesses. See ante, §§ 8024 and 8025.

Rules of construction. See ante, § 4.

Rights of witnesses. See ante, §§ 8030 and 8031.

The code establishes the law of this state, respecting the subjects to which it relates. *Dodd v. Vucovich*, 38 Mont. 188, 192, 99 Pac. 296.

§ 8062.

Applied to actions for death, caused by the wrongful act or neglect of another. See *Melville v. Butte-Balaklava Copper Co.*, 47 Mont. 1, 10, 130 Pac. 441.

§ 8065.

Computation of time. See ante, § 6219; post, § 8067.

Publication of summons is complete, when. See note ante, § 6521.

Week, what is. See ante, § 2030.

TIME.

§ 8067.

Holidays. See ante, § 8065.

Computation of time. See ante, § 6219.

The year and its parts. See post, § 8071.

"Year" means calendar year. See post, § 8071.

Week, what is. See ante, § 2030.

Applied to presentment and service of memorandum of costs. *McDonnell v. Huffine*, 44 Mont. 411, 428, 120 Pac. 428.

The rule of this section is applicable to computations under the statute of limitations in all cases, whether the actions are *ex contractu* or *ex delicto*. It applies to an action for libel. *Kelly v. Independent Pub. Co.*, 45 Mont. 127, 134, Ann. Cas.

1913D, 1063, 38 L. R. A. (N. S.) 1160; 122 Pac. 735.

Two holidays, appearing in succession at the end of the time limited, are to be excluded. *Kelly v. Independent Pub. Co.*, 45 Mont. 127, 135, Ann. Cas. 1913D, 1063; 38 L. R. A. (N. S.) 1160, 122 Pac. 735.

For most purposes, the law regards a day as an indivisible unit. It is only when it becomes necessary to inquire into the order of sequence of two or more events occurring on the same day, for the purpose of determining a question of priority of right, or when the computation includes only one day or less, that a departure from this rule is permitted. *Kelly*

v. Independent Pub. Co., 45 Mont. 127, 133, Ann. Cas. 1913D, 1063, 38 L. R. A. (N. S.) 1160, 122 Pac. 735.

Editorial Notes.

Limitation of actions; rule as to first and last days in computation of time. 38 L. R. A. (N. S.) 1160.

Computation of time. 7 Am. Dec. 250; 46 Am. Rep. 410; 78 Am. St. Rep. 872.

Computation of time, fractions of a

day, when will be considered. 26 Am. Dec. 234; 2 Ann. Cas. 135.

Inclusion of day of accrual of action in computing limitation against action. Ann. Cas. 1913D, 1068; 12 Ann. Cas. 58; 49 L. R. A. 193; 15 L. R. A. (N. S.) 686.

Computation of time for performance of act required by statute when last day falls on Sunday. 7 Ann. Cas. 325; 20 Ann. Cas. 1318; Ann. Cas. 1914B, 1036.

WORDS AND PHRASES.

§ 8070.

Meaning of "transaction." See note ante, § 6541.

The word "township" is to be construed according to the context and the approved use of the language. State v. Cronin, 41 Mont. 293, 296, 109 Pac. 144.

§ 8071.

"Person" includes corporation. See ante, §§ 16 and 6224, and post, § 8099; also note ante, § 4725.

The year and its parts. See ante, § 2029.

"Willfully," defined. See note post, § 8099.

Editorial Notes.

"Person" as including private corporation. Ann. Cas. 1914A, 1308.

"Personal property" in will as including money. Ann. Cas. 1913D, 857.

§ 8078.

Special proceeding by physician, whose license has been revoked. See note ante, § 1588.

§ 8079.

Action is "commenced," when. See ante, § 6457.

Special proceeding, what is a. See note post, § 8080.

§ 8080.

Special proceeding by physician, whose license has been revoked. See note ante, § 1588.

§ 8090.

General purpose of the codes. See note ante, § 3553.

Editorial Notes.

Repeal of statutes, effect of. 12 Am. Dec. 480; 94 Am. Dec. 217.

Repeal of statutes by implication. 14 Am. Dec. 209; 88 Am. St. Rep. 271.

Effect of repeal of civil statute after final judgment in action based on such statute. Ann. Cas. 1912B, 1157.

Effect of simultaneous repeal and re-enactment of statute. Ann. Cas. 1912D, 539; 11 Ann. Cas. 472.

Effect on contract made void by statutory or constitutional provision of subsequent repeal of such provision. Ann. Cas. 1913C, 1398.

PART V.

PENAL CODE.

§ 8096.

Construction of statute forbidding discrimination in charges for railroad tickets. See note ante, § 4337.

Applied to the construction of section 8369, post. *State v. Penny*, 42 Mont. 118, 126, 31 L. R. A. (N. S.) 1155, 111 Pac. 727.

§ 8097.

General purpose of the codes. See note ante, § 3553.

§ 8099.

Terms in civil cases defined. See ante, § 8071.

"Person" includes corporation. See ante, §§ 16, 6224 and 8071; also note ante, § 4725.

Interpretation of paragraph 16 of this section, with reference to the words "private banker" and "individual banker," as used in the statute regarding fraudulent insolvencies. In *re Wisner*, 36 Mont. 309, 92 Pac. 958.

The word "willfully," when applied to the intent with which an act is done or omitted, either in criminal or civil cases, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage. *Haddox v. Northern Pac. Ry. Co.*, 43 Mont. 8, 15, 113 Pac. 1119.

Editorial Notes.

Meaning of term "knowingly." Ann. Cas. 1912A, 429.

"Person" as including private corporation. Ann. Cas. 1913D, 857.

"Personal property" in will as including money. Ann. Cas. 1913D, 857.

What is "seal." Ann. Cas. 1912C, 42.

What constitutes "willful misconduct" in office. Ann. Cas. 1912C, 1083.

§ 8107.

Accusation for removal of sheriff from office, sufficiency of. See note post, § 9006.

Violation of city ordinance is not a "public offense." See note post, § 9677.

§ 8110.

Generally, every felony is punishable either by death or imprisonment in the state prison, and every misdemeanor by fine or imprisonment in the county jail.

State v. District Court, 37 Mont. 206, 95 Pac. 841.

§ 8112.

In statutory offenses, as for collecting illegal fees, the intent is conclusively presumed. *State v. District Court*, 44 Mont. 318, 326, Ann. Cas. 1913B, 396, 119 Pac. 1103.

This and the following section are cited in *State v. Schaefer*, 35 Mont. 221, 88 Pac. 792, holding that an instruction that when an unlawful act is shown to have been deliberately committed for the purpose of injuring another, it is presumed to have been committed with a malicious and guilty intent, and that the law presumes that a person intends the ordinary consequences of his act, should not be given in a prosecution for assault in the first degree. *State v. Schaefer*, 35 Mont. 221, 88 Pac. 792.

Such an instruction may be properly given in a case where the charge and facts warrant, but when a defendant is on trial for a crime involving a specific intent as the gist of the offense, it might mislead the jury. *State v. Schaefer*, 35 Mont. 221, 88 Pac. 792.

Editorial Notes.

Good faith or intent of public officer, in committing wrongful act, as affecting right of removal therefor. Ann. Cas. 1913B, 400.

Insurance against larceny of automobile. L. R. A. 1915B, 327.

§ 8113.

Contesting probate of wills. See ante, § 7397.

The presumption which attaches generally to human conduct in the relations of life is, that persons are presumed to be sane until the contrary appears. In *re Murphy's Estate*, 43 Mont. 353, 372, Ann. Cas. 1912C, 380, 116 Pac. 1004.

§ 8119.

In a prosecution for arson, where there is some testimony that defendant procured another to set the fire, the giving of instructions, embodying the provisions of sections 8119 and 9167, is proper; as is also the refusing of others, directing the jury to find for the defendant, unless they are satisfied beyond a reasonable doubt that he was present personally and set the fire himself. *State v. Chevigny*, 48 Mont. 382, 386, 138 Pac. 257.

Editorial Notes.

Accessories after the fact. 80 Am. Dec. 95.

Aiding and abetting the commission of a crime. 51 Am. Rep. 373; 13 Am. Rep. 177.

Interference with evidence of crime as rendering one accessory after fact. Ann. Cas. 1912B, 503.

Accessories before the fact. 33 L. R. A. (N. S.) 334.

§§ 8147-8159.

See corrupt practices act, post, p. 977.

§ 8180.

Status of policeman as an officer. See note ante, § 3250.

§ 8182.

An information charging one with being accessory to a county official, in purchasing evidences of indebtedness against the county, which fails to allege that the defendant knew that the accessory was a county officer, is defective. State v. Danzer, 35 Mont. 272, 88 Pac. 952.

Insufficiency of evidence to sustain a conviction in a prosecution for purchasing

evidences of indebtedness against the county, contrary to this section. State v. Danzer, 35 Mont. 272, 88 Pac. 952.

§ 8209.

The provisions of this section include offers made to members of the jury panel, and do not refer to those members only who have been sworn in a particular case, whose votes it is sought to influence. State v. District Court, 37 Mont. 191, 198, 15 Ann. Cas. 743, 95 Pac. 593.

§ 8212.

One who offers a bribe to a juror, with an intent to influence his decision, is guilty of a felony, whether the juror has been actually sworn in a particular case or is only a member of the panel from which a jury is to be selected. State v. District Court, 37 Mont. 198, 15 Ann. Cas. 743, 95 Pac. 593.

§ 8241.

Affidavit for publication of summons. See note ante, § 6520.

Cited to remarks made in Smith v. Collins, 42 Mont. 350, 362, Ann. Cas. 1912A, 1158, 112 Pac. 1070.

HOMICIDE.**§ 8290.**

An information stating that the defendant unlawfully, feloniously, willfully, premeditatedly, deliberately and of his malice aforethought, shot and killed, a person named, a human being, sufficiently charges murder. State v. Crean, 43 Mont. 47, 53, Ann. Cas. 1912C, 424, 114 Pac. 603.

In an information for murder it is sufficient to allege that the killing was with malice aforethought. The elements of premeditation and deliberation are matters of proof. State v. Nielson, 38 Mont. 451, 454, 100 Pac. 229.

Editorial Notes.

Necessity that indictment for homicide should allege that deceased was human being. 20 Ann. Cas. 775.

Malice aforethought. 38 L. R. A. (N. S.) 1054.

§ 8291.

In a prosecution for murder, the jury is justified in finding a malicious intent to take human life, where the defendant, a short time prior to the killing, declared his intention of shooting the person whom he should see in possession of his saddle horse, and where he did do so, though the

victim was a stranger to him. State v. Leakey, 44 Mont. 354, 362, 120 Pac. 234.

§ 8293.

If the accused, in a prosecution for murder, fails to raise in the minds of the jurors a reasonable doubt as to his guilt, the jury is justified in finding the highest degree of the crime, and in fixing the death penalty. State v. Leakey, 44 Mont. 354, 366, 120 Pac. 234.

§ 8297.

All that is necessary to constitute murder, the other requisite facts being proved, is that the death of the party occurred within a year and a day after the stroke received or the cause of death administered. State v. Powers, 39 Mont. 259, 267, 102 Pac. 583.

§ 8298.

In a prosecution for murder, this section does not require direct proof of the identity of the victim, or of the fact that the killing was done by the defendant, but only of the fact of death. State v. Nordall, 38 Mont. 327, 338, 99 Pac. 960.

KIDNAPING.

§ 8306.

This section includes within its purview as distinct offenses these several acts, viz.: The seizure, etc., of one person by another with intent to cause him, without authority of law, (1) to be secretly confined or imprisoned in this state, (2) to be sent out of the state, or (3) to be in any way held to service or kept or detained against his

will, or against the will of his or her parent or guardian, whether such guardian be natural or appointed. *State v. McDonald* (Mont.), 149 Pac. 279.

Editorial Notes.

Criminal liability of parent for taking child from another to whom custody has been awarded. *Ann. Cas.* 1914B, 274.

ROBBERY.

§ 8309.

Attempt to commit robbery. See post, § 8894.

Sufficiency of information for robbery. See note post, § 9156.

Mere proof of an assault does not establish the crime of an attempt to commit robbery; an essential element of robbery is the intent. *State v. Hanson*, 49 Mont. 361, 368, 141 Pac. 669.

It is not necessary for the information in a robbery case to charge the degree of force used. *State v. Paisley*, 36 Mont. 245, 92 Pac. 566.

Taking property from the person or immediate presence of another, without resistance on his part, does not constitute robbery; to constitute that offense there must be either force or fear. *State v. Paisley*, 36 Mont. 244, 92 Pac. 566.

Editorial Notes.

Nature and elements of crime of robbery. 70 Am. Dec. 178; 135 Am. St. Rep. 474.

Sufficiency of indictment for robbery with respect to description of property taken. *Ann. Cas.* 1912B, 402.

What force sufficient to constitute robbery. 57 L. R. A. 432.

§ 8310.

If an information charging robbery is defective in not stating facts sufficient to allege fear, it will still not be vulnerable to attack if there is a sufficient allegation of force. *State v. Paisley*, 36 Mont. 237, 92 Pac. 566.

§ 8311.

A sentence to fifty years' imprisonment, of one convicted of robbery, who is also found to have been previously convicted in another state of burglary, is warranted by the law. *State v. Paisley*, 36 Mont. 248, 92 Pac. 566.

ASSAULT.

§ 8312. Assault in First Degree.

Every person who, with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted or of another;

1. Assaulds another with a loaded firearm or any other deadly weapon, or by any other means or force likely to produce death; or,

2. Administers or causes to be administered to, or taken by another, so as to endanger the life of such other,

Is guilty of assault in the first degree, and is punishable by imprisonment in the state prison not less than five nor more than twenty years. [Amendment approved January 31, 1911; Laws 1911, p. 9.]

In cases of assault of the first degree, where the specific charge in the information is "assault with intent to kill," the instructions should omit all reference to murder or manslaughter, and advise juries, in lieu thereof, that, to sustain the information, they must find, beyond a reasonable doubt, that the assault was committed with intent to kill. *State v. Schaefer*, 35 Mont. 222, 88 Pac. 792.

Editorial Notes.

Assault, by words only. 39 Am. Rep. 712.

Liability for assault of one who orally encourages another in making attack. *Ann. Cas.* 1912A, 830.

Injury to third person as assault with intent to kill or murder. *Ann. Cas.* 1912A, 1063.

Assault accompanied by threat to kill unless demand is complied with as assault with intent to kill or murder. Ann. Cas. 1913A, 202.

Pointing unloaded firearm as assault. 15 L. R. A. (N. S.) 1272; 41 L. R. A. (N. S.) 181.

Assault with intent to kill by unlawful act aimed at third person. 37 L. R. A. (N. S.) 172.

Ax as deadly weapon. Ann. Cas. 1912A, 1330.

§ 8313.

Attempt to commit crime. See post, § 8894.

One charged with assault in the second degree and convicted of that crime in the third degree was not prejudiced by an instruction comprising all of the subdivisions of this section. *State v. Farnham*, 35 Mont. 375, 89 Pac. 728.

An information charging that the defendant "did willfully, unlawfully, wrongfully, intentionally and feloniously assault one S., by throwing said S. from a moving street-car, with intent in him, the said defendant, to inflict grievous bodily harm upon said S.," sufficiently charges assault in the second degree, under subdivision 3 of this section. *State v. Tracey*, 35 Mont. 554, 90 Pac. 791.

FALSE IMPRISONMENT.

§ 8324.

Evidence shows that the liberty of the prosecuting witness was violated within the meaning of the statute defining false imprisonment. *State v. McDonald* (Mont.), 149 Pac. 279.

False imprisonment is treated as a tort and also as a crime, the definition being the same in either case. The liability of the wrongdoer does not depend primarily upon his mental attitude. *Kroeger v. Passmore*, 36 Mont. 508, 14 L. R. A. (N. S.) 988, 93 Pac. 805.

Treating false imprisonment as a tort, as distinguished from a crime, the only defenses which may be interposed thereto are a denial of the imprisonment and a justification of the imprisonment. *Kroeger v. Passmore*, 36 Mont. 510, 14 L. R. A. (N. S.) 988, 93 Pac. 805.

False imprisonment is an unlawful violation of the personal liberty of another, and is the subject of an action, whether the wrongful act is prompted by malice or not. *Grorud v. Lossi*, 48 Mont. 274, 283, 136 Pac. 1069.

The gist of the offense of false imprisonment is the unlawful detention. *Stephens v. Conley*, 48 Mont. 352, 364, 138 Pac. 189.

An information charging the defendant with having willfully, unlawfully and feloniously assaulted a person with a piece of iron pipe, with intent to inflict grievous bodily harm, is sufficient to charge an assault with intent to commit a felony, and gives the district court jurisdiction. *State v. Farnham*, 35 Mont. 375, 89 Pac. 728.

Under a charge of assault, the defendant may be convicted either of the assault or of the attempt, because the former includes all the elements of the latter. *State v. Stone*, 40 Mont. 88, 91, 105 Pac. 89.

§ 8314.

A verdict finding a defendant guilty of an assault with corrosive acids and caustic chemicals, which fails to find that the assault is committed willfully or maliciously, or with intent to injure, is a verdict of guilty of assault in the third degree. *State v. District Court*, 35 Mont. 324, 89 Pac. 63.

§ 8315.

Willfulness, malice and intent to injure are necessary to constitute an assault, with corrosive acids or caustic chemicals, a felony; and, without a finding as to these necessary requisites, a verdict finding the defendant guilty of an assault with corrosive acids and caustic chemicals will not support a conviction for a felony. *State v. District Court*, 35 Mont. 323, 89 Pac. 63.

If an arrest and imprisonment have been accomplished without legal process, it is false imprisonment. *Grorud v. Lossi*, 48 Mont. 274, 283, 136 Pac. 1069.

Editorial Notes.

What constitutes false imprisonment, and the liability therefor. 67 Am. St. Rep. 408; 118 Am. St. Rep. 719.

Making complaint before judicial officer on which warrant issues as rendering complainant liable for false imprisonment where complaint states no offense or gives officer no jurisdiction. Ann. Cas. 1912B, 1373.

Liability of officer making arrest. 51 L. R. A. 193.

False imprisonment as depending on means of accomplishing detention or restraint. Ann. Cas. 1912D, 727.

Delay in presenting prisoner for examination or trial as constituting false imprisonment. Ann. Cas. 1914A, 717.

Liability of judicial officers for false imprisonment. Ann. Cas. 1914C, 1166.

Probable cause for believing in guilt. Ann. Cas. 1914A, 1020.

LIBEL.

§ 8325.

Statute of limitations in libel. See ante, § 6448.

§ 8327.

If a publication is libelous per se, the law presumes malice, in the absence of lawful excuse, even though no spite or ill-will is shown. *Kelly v. Independent Pub. Co.*, 45 Mont. 127, 141, Ann. Cas. 1913D, 1063, 38 L. R. A. (N. S.) 1160, 122 Pac. 735.

Editorial Notes.

Words, what actionable per se. 1 Am. Dec. 448; 12 Am. Dec. 39; 41 Am. Rep. 590; 116 Am. St. Rep. 802.

Charging woman with unchastity as actionable per se. 15 Ann. Cas. 1242; 24 L. R. A. (N. S.) 577.

Imputing incompetency to physician. 26 L. R. A. 325.

Dramatic criticism as libel or slander. Ann. Cas. 1912B, 985.

Political criticism as libel or slander. Ann. Cas. 1914C, 997.

Words holding woman up to ridicule as actionable. Ann. Cas. 1914A, 1127.

Statement that nontrader owes debt and refuses to pay as libel per se. Ann. Cas. 1914B, 712.

Accusing person of cheating as actionable per se. Ann. Cas. 1912C, 1266.

Calling person "humbug" as libel or slander. Ann. Cas. 1913B, 256.

§ 8328.

Editorial Notes.

Effect of provision that jury shall determine the law and the facts in libel cases. 51 L. R. A. (N. S.) 369.

§ 8331.

What publication is not privileged. See note ante, § 3604.

SEXUAL CRIMES.

§ 8336. Definition of Rape—Age of Consent.

Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

1. When the female is under the age of eighteen years.
2. Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.
3. Where she resists, but her resistance is overcome by violence or force.
4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution, or by any intoxicating, narcotic or other anesthetic substance, administered by or with the privity of the accused.
5. Where she is, at the time, unconscious of the nature of the act, and this is known to the accused.
6. Where she submits, under a belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense or concealment practiced by the accused, with the intent to induce such belief. [Amendment approved February 13, 1913; Laws 1913, p. 15.]

If an information for rape states that the act was committed by force and violence, and against the will and consent of the female, it is not necessary to set forth with particularity the facts set forth in the third and fourth paragraphs of this section; they may be proved under the allegations made. *State v. Morrison*, 46 Mont. 84, 88, 125 Pac. 649.

While the prosecutrix in rape may not have given ready consent to the act of intercourse, the defendant cannot be lawfully convicted if the prosecutrix did not

offer any physical resistance which it required force to overcome. *State v. Needy*, 43 Mont. 442, 444, 117 Pac. 102.

Editorial Notes.

What constitutes rape. 80 Am. Dec. 361.

Intercourse by consent secured through mock marriage as rape. Ann. Cas. 1912C, 131.

Intercourse with person of unsound mind as rape. Ann. Cas. 1912B, 1049.

Necessity of using word "feloniously" in indictment for rape. 7 Ann. Cas. 263.

Necessity of express allegation in indictment that act was done against

will or without consent of female. 9 Ann. Cas. 417.

Necessity that indictment negatives marital relations between accused and prosecutrix. 16 Ann. Cas. 902.

§ 8339. Punishment for Rape.

Rape is punishable by imprisonment in the state prison not less than two nor more than ninety-nine years. [Amendment approved February 12, 1909; Laws 1909, p. 10.]

§ 8341. Importation and Exportation of Females for Immoral Purposes.

(Section 1.) The importation of women and girls into this state or the exportation of women and girls from this state for immoral purposes is hereby prohibited and whoever shall induce, entice or procure, or attempt to induce, entice or procure, to come in this state, or to go from the state, any woman or girl for the purpose of prostitution or concubinage, or for any other immoral purpose, or to enter any house of prostitution in this state or anyone who shall aid any such woman or girl in obtaining transportation to or within this state, for the purpose of prostitution or concubinage, or for any other immoral purpose, shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment in the state prison for a period of not less than two years nor more than twenty years, or by fine not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment. [Approved January 28, 1911; Laws 1911, c. 1, p. 3.]

§ 8342. Placing or Procuring Females to Reside in Houses of Ill Fame.

(Section 2.) Any person who shall place any female in the charge or custody of any other person for immoral purposes or in a house of prostitution or elsewhere with intent that she shall live a life of prostitution; or any person who shall compel or shall induce, entice or procure, or attempt to induce, entice, procure or compel any female to reside with him or with any other person for immoral purposes, or for the purpose of prostitution or shall compel any such female to reside in a house of prostitution or compel or attempt to induce, entice, procure or compel her to live a life of prostitution shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment in the state prison for a period of not less than two years nor more than twenty years, or by fine not less than one thousand dollars, nor more than five thousand dollars, or by both such fine and imprisonment. [Approved January 28, 1911; Laws 1911, c. 1, p. 3.]

§ 8342a. Inducing Female to Enter Such Houses a Felony.

(Section 3.) Any person who shall induce, entice or procure, or attempt to induce, entice or procure any woman or girl for the purpose of prostitution or concubinage, or for any other immoral purpose, or to enter any house of prostitution in this state shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment in the state prison for a period of not less than two years nor more than twenty years, or by fine not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment. [Approved January 28, 1911; Laws 1911, c. 1, p. 4.]

§ 8342b. Receiving Valuable Consideration for Such Practices a Felony.

(Section 4.) Any person who shall receive any money or other valuable thing for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons to whom she is not married shall be guilty of a felony and, upon conviction thereof, shall be punishable by imprisonment in the state prison for a period of not less than two years nor more than twenty years, or by fine not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment. [Approved January 28, 1911; Laws 1911, c. 1, p. 4.]

§ 8342c. Payment of Consideration for Procuring Females for House of Ill Fame.

(Section 5.) Any person who shall pay any money or other valuable thing to procure any female for the purpose of placing her for immoral purposes in any house of prostitution or elsewhere, with or without her consent, [shall] be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment in the state prison for a period of not less than two years nor more than twenty years, or by fine not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment. [Approved January 28, 1911; Laws 1911, c. 1, p. 4.]

§ 8342d. Receiving Valuable Consideration for Procuring Female for Immoral Purposes.

(Section 6.) Any person who shall knowingly receive any money or other valuable thing for or on account of procuring and placing in the custody of another person for immoral purposes any woman, with or without her consent, shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment in the state prison for a period of not less than two years nor more than twenty years, or by fine not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment. [Approved January 28, 1911; Laws 1911, c. 1, p. 5.]

§ 8342e. Restraining Female to Compel Payment of Debts.

(Section 7.) Any person who shall hold, detain, restrain or attempt to hold, detain or restrain in any house of prostitution or other place, any female for the purpose of compelling such female, directly or indirectly, by her voluntary or involuntary service or labor to pay, liquidate or cancel any debt, dues or obligations incurred in such house of prostitution or in any other place shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment in the state prison for a period of not less than two years nor more than twenty years, or by fine not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment. [Approved January 28, 1911; Laws 1911, c. 1, p. 5.]

§ 8342f. Acceptance or Appropriation of Earnings of Fallen Women.

(Section 8.) Any person who shall knowingly accept, receive, levy, or appropriate any money or other valuable thing without consideration, from the proceeds or earnings of any woman engaged in prostitution shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment in the state prison for a period of not less than two years nor more than twenty years, or by fine of not less than one thousand

dollars nor more than five thousand dollars, or by both such fine and imprisonment. Any such acceptance, receipt, levy, or appropriation of such money or valuable thing shall upon any proceeding or trial for violation of this section be presumptive evidence of lack of consideration. [Approved January 28, 1911; Laws 1911, c. 1, p. 5.]

§ 8342g. Living upon Earnings of Such Women.

(Section 9.) Any male person who shall live with, or in whole or in part upon the earnings of, or money supplied by a common prostitute or woman of bad repute, shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment in the state prison for a period of not less than one year nor more than twenty years. [Approved January 28, 1911; Laws 1911, c. 1, p. 5.]

§ 8342h. Repealing Clause.

(Section 10.) That sections 8341 and 8342, Revised Codes of 1907, be, and the same are, hereby repealed. [Approved January 28, 1911; Laws 1911, c. 1, p. 6.]

The effect of the statutory provision is that it invades the province of the federal legislature, under the United States Constitution, in respect to interstate commerce. The subject is covered indeed by federal legislation, to wit, the Mann Act, 36 U. S. Stats. 825, c. 395. *State v. Harper*, 48 Mont. 458, 51 L. R. A. (N. S.) 157 et seq., 138 Pac. 495.

offense under this section, having been filed as required by section 9584, post. In *re Graye*, 36 Mont. 400, 93 Pac. 66.

The offense of living together in open and notorious cohabitation, in a state of fornication, is a misdemeanor, and falls within the jurisdiction of a justice of the peace. *Hosoda v. Neville*, 45 Mont. 310, 312, 123 Pac. 20.

§ 8343.

Criminal jurisdiction of justices of the peace. See ante, § 6288.

Instance of a complaint, charging an

Editorial Notes.

Use of word "feloniously" in indictment or information for adultery. *Ann. Cas.* 1912A, 263.

§ 8344a. Lewd Act With Child.

Any person over the age of eighteen years, who shall willfully and lewdly commit any lewd or lascivious acts, other than the acts constituting other crimes provided in Part I, Title IX, of the Revised Codes of Montana of 1907, upon or with the body or any part or member thereof, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust or passions of sexual desires of such person, or of such child, shall be guilty of a felony, and shall be imprisoned in the state prison not exceeding five years. [Approved March 8, 1913; Laws 1913, c. 59, p. 113.]

§ 8358.

Reasons why county attorneys have refrained from instituting prosecutions for violations of this section. *State (ex rel. Cotter) v. District Court*, 49 Mont. 146, 153, 140 Pac. 732.

Punishment may be for life. See post, § 8902.

§ 8368. [Repealed.]

By act approved March 3, 1909; Laws 1909, c. 52, p. 59.

§ 8359.

Punishment for attempt to commit offense. See post, § 8895.

OFFENSES AGAINST GOOD MORALS.

§ 8369. Keeping Places of Amusement Open on Sunday.

Every person who on Sunday, or the first day of the week, keeps open or maintains, or who aids in opening or maintaining any dance-hall, dance-house, race-track, gambling-house, or pool-room, variety-hall or in any other place of amusement where any intoxicating liquors are sold or dispensed, is guilty of a misdemeanor; provided, however, that the provisions of this section shall not apply to such dancing-halls or pavilions as are maintained or conducted in public parks or playgrounds where no admission is charged, and where good order is maintained, and where no intoxicating liquors are sold. [Amendment approved March 6, 1915; Laws 1915, p. 146.]

This section is not directed toward the keeping open and maintaining of a theater building, but refers to the class of entertainment furnished, or performances therein. *State v. Penny*, 42 Mont. 118, 123, 31 L. R. A. (N. S.) 1155, 111 Pac. 727.

This section is to be construed with section 8096, ante. *State v. Penny*, 42 Mont. 118, 126, 31 L. R. A. (N. S.) 1155, 111 Pac. 727.

The operation of moving picture shows, on Sunday, is not a violation of this section, where it is shown that the pictures are of a clean and moral character, and have been approved by a general board of censors located in another state. *State v. Penny*, 42 Mont. 118, 126, 31 L. R. A. (N. S.) 1155, 111 Pac. 727.

In a prosecution under this section, the fact that the show is sometimes called a

"theater" is immaterial, if the class of entertainment furnished is particularly described. *State v. Penny*, 42 Mont. 118, 124, 31 L. R. A. (N. S.) 1155, 111 Pac. 727.

The word "theater," as used in this section, means a theatrical performance or entertainment, and does not include all shows, though a "show" includes a theatrical performance. *State v. Penny*, 42 Mont. 118, 126, 31 L. R. A. (N. S.) 1155, 111 Pac. 727.

Editorial Notes.

What amusements are prohibited by Sunday laws. 30 L. R. A. (N. S.) 465.

Constitutionality of statutes requiring the observance of Sunday. 49 Am. Dec. 616; 78 Am. St. Rep. 264; Ann. Cas. 1913E, 935; 12 Ann. Cas. 1096.

§ 8380. Furnishing Liquors to Habitual Drunkards, Minors or Indians.

Every person who sells or gives intoxicating liquors to persons who are in the habit of getting drunk or intoxicated, or of drinking intoxicating liquors to excess, after being notified in writing of such habit, or who sells or gives intoxicating liquors to persons at the time in a state of intoxication, or visibly affected by intoxicating liquors, or who sells or gives intoxicating liquors to a minor or an Indian, is liable in damages to any person who is injured thereby in money, property or means of support. In a suit for recovering damages named in this section, a married woman may sue in her own name and a minor by guardian. [Amendment approved February 27, 1915; Laws 1915, p. 60.]

Editorial Notes.

Validity and construction of statute forbidding sale of liquor to Indians. Ann. Cas. 1912B, 1090.

§ 8380a. Penalty for Violation of Act.

A violation of any of the provisions of this act shall be deemed a misdemeanor, and upon conviction the offender shall be punished by a fine of not less than fifty dollars and not exceeding two hundred and fifty dollars, and persons acting as servants, employees or agents shall be liable in the same manner as their employers or principals. [New section adopted February 27, 1915; Laws 1915, p. 60.]

§ 8380b. Penalty upon Second or Third Conviction.

Any person convicted a second time for a violation of the provisions of this act, in addition to the penalty above named, if he be engaged in the business of selling intoxicating liquors, shall be prohibited from the conduct of such business for a period of three months from the date of such conviction, and any such person convicted a third time for a violation of the provisions of this act shall, in addition to the penalty prescribed in section 8380 (a) hereof, be barred from obtaining a retail liquor license for a period of six months to three years within said county. [New section adopted February 27, 1915; Laws 1915, p. 60.]

§ 8380c. Minor Misstating Age.

Any minor who shall misstate his age shall be guilty of a misdemeanor and any person who shall send a minor to any person to purchase any such intoxicating liquors shall be equally guilty with the person who shall give or sell such intoxicating liquor as provided in section 1 of this act. [New section adopted February 27, 1915; Laws 1915, p. 60.]

§ 8385.

An information, under this section, alleging that the defendant was "then and there" the owner and manager, having charge and control, is sufficient, under section 9155, post, to apprise him that he is accused of being in control "for the time being." The exact words of the statute need not be used. *State v. Conway*, 38 Mont. 42, 43, 98 Pac. 654.

Editorial Notes.

What is "hotel" within statute regulating sale of liquor. *Ann. Cas.* 1913B, 1030.

Liability of licensee for illegal sale of intoxicating liquors by his servant against instructions. *Ann. Cas.* 1912A, 1109.

§ 8388.

A greater penalty than a fine for a first offense is not imposed by a judgment providing that in default of payment of the fine, defendant be imprisoned one day for each two dollars of the fine not paid.

State ex rel. Poindexter v. District Court (Mont.) 149 Pac. 958.

§ 8390.

Status of policeman as an officer. See note ante, § 3250.

§ 8397.

It is unlawful to furnish minors to perform messenger service for the inmates of houses of prostitution, though their parents or guardians consent to their employment in such places, in the face of an ordinance making the presence of minors in and about such houses unlawful. *Andrieux v. City of Butte*, 44 Mont. 557, 559, *Ann. Cas.* 1913B, 712, 121 Pac. 291.

Editorial Notes.

Injunction against police surveillance of place of business or amusement. *Ann. Cas.* 1913B, 713.

What is disorderly house. 134 Am. St. Rep. 819.

Disorderly house, reputation, evidence of is admissible. 50 Am. Rep. 209; 12 *Ann. Cas.* 273; 20 L. R. A. 610.

GAMING.

§ 8416.

Conviction on testimony of accomplice. See post, § 9290.

This section subjecting to a penalty any person conducting any brokerage business, bucket-shop, or office where grain, stocks, or securities of any kind are sold on margins, refers only to such transactions on margins as are recognized as gambling transactions, such as a mere payment of the difference between the contract and the market price. It does not apply to a legitimate contract for the future delivery of stocks, where a part of the price has been paid and the stock is held as

security for the payment of the balance. *In re Dorr*, 186 Fed. 276, 278, 108 C. C. A. 322.

This section prohibiting places where stocks are sold on a margin, being penal, must be strictly construed. *In re Dorr*, 186 Fed. 276, 278, 108 C. C. A. 322.

An information charging the defendant with a violation of this section "as owner and proprietor" of the game is not defective. The words quoted do not restrict or enlarge the scope or meaning of the information, and may be rejected as surplusage. *State v. Tudor*, 47 Mont. 185, 187, 131 Pac. 632.

In an information under this section for carrying on and conducting a game of chance played with cards, it is not necessary to give the name of the particular game. If stated, it is mere surplusage, and the state, after the defendant's plea has been entered, may be permitted to amend the information by striking out such designation. *State v. Duncan*, 40 Mont. 531, 535, 107 Pac. 510.

The mere player who does not take part in carrying on, opening, or causing to be opened, conducting, or causing to be conducted, operating, or running the prohibited game, as principal, agent, or employee, is not guilty of any offense. He is not an accomplice. *State v. Wakely*, 43 Mont. 427, 438, 117 Pac. 95.

An information alleging that the defendant carried on, opened, conducted and ran a game of studhorse poker, the same being a game of chance, charges a violation of this section. *State v. Wakely*, 43 Mont. 427, 433, 117 Pac. 427.

An information charging the defendant

with permitting a game of chance to be played upon his premises is not defective because of its failure to set forth the names of the persons permitted to play. *State v. Radmilovich*, 40 Mont. 93, 98, 105 Pac. 91.

Editorial Notes.

What is gaming. 33 Am. Dec. 134.

Applicability of statute against gambling in social club. Ann. Cas. 1912A, 995.

Playing cards at private house as within statute against gaming. Ann. Cas. 1913C, 539.

§ 8426.

Status of policeman as an officer. See note ante, § 3250.

§ 8428.

Status of policeman as an officer. See note ante, § 3250.

§ 8436a. Pooling in Purchase, Sale or Handling of Grain by Warehousemen—Penalty.

(Section 1.) It shall be unlawful for any person, firm, or corporation engaged in the buying, selling, or handling of grain in any public local warehouse in this state, or for the local agent in charge of such warehouse, or any other agent of the person, firm or corporation operating the same, to enter into any contract, agreement, combination, or understanding with any other person, firm, or corporation, owning or operating any other public local warehouse at any railway station, their agent or agents, whereby the amount of grain to be received or handled by said warehouses at such station or stations, shall be equalized or pooled between said warehouses, or whereby the profits or earnings derived from said warehouses shall be divided or pooled or apportioned in any manner, or whereby the price to be paid for any kind of grain, at such station, shall be fixed or in any manner affected; and each day of the continuance of any such agreement, contract, or understanding shall constitute a separate offense.

(Section 2.) Any person, firm, or corporation, or any agent of any person, firm, or corporation, who shall violate the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars or more than three hundred dollars, or by imprisonment in the county jail for not less than thirty days or more than six months, or by both such fine and imprisonment. It shall be the duty of the court before whom a conviction is had to, within ten days after judgment of conviction is rendered, forward a certified copy of said judgment of conviction to the chief grain inspector; and it is hereby made the duty of the chief grain inspector to revoke and annul any license heretofore issued to such person; and in such case no new license shall be granted to the person whose license is revoked, nor to any one either directly or indirectly engaged with him in said business, for a period of one year. [Approved March 5, 1915; Laws 1915, c. 69, p. 96.]

§ 8436b. Betting on Races.

(Section 1.) It shall be unlawful to make or report or record or register any bet or wager upon the result of any contest of speed or skill or endurance of animal or beast, whether such contest is held within or without the state of Montana.

(Section 2.) Any person who aids or abets in the commission of any of the acts herein declared to be unlawful, either by transmitting or communicating or transferring money or other thing of value, or information for the purpose of having bets or wagers made or reported or recorded or registered, shall be deemed a principal in the commission of such offense.

(Section 3.) Every person, or persons, violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine or not less than one hundred dollars or more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(Section 4.) Chapter 92 of the Laws of the Eleventh Session of the Legislative Assembly of Montana is hereby repealed and all acts or parts of acts in conflict herewith are hereby repealed.

(Section 5.) This act is hereby declared to be necessary for the immediate preservation of the public peace, health and safety, and shall take effect from and after its passage and approval by the Governor. [Approved March 3, 1915; Laws 1915, c. 55, p. 83.]

Chapter 92 of Laws of 1909, repealed by 213, 122 Pac. 268; State v. Rose, 40 Mont.
Chapter 55 of Laws of 1915, was cited and 66, 105 Pac. 82.
construed in State v. Gemmell, 45 Mont.

§ 8444. Operation of Boilers Without License—Penalty.

Every person who operates any steam boiler or steam engine without first obtaining a license from the boiler inspector or assistant boiler inspector as required by law, and every owner, employer or manager of any steam engine or boiler who knowingly permits any unlicensed engineer to operate any steam boilers or steam engines where a license is required, or who operates or causes to be operated any steam engine or boiler without having the same inspected and the inspector's certificate issued thereon as required by law, or who violates any of the provisions of section 1639 to and including section 1659 of the Revised Codes of 1907 as amended by this act shall be deemed guilty of a misdemeanor and upon conviction thereof, where no other punishment is prescribed, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail of not exceeding six months or by both such fine and imprisonment. [Amendment approved February 24, 1913; Laws 1913, p. 42.]

§ 8447. Forging or Counterfeiting Trade Marks or Names.

Every person, association or corporation who knowingly or willfully forges or counterfeits, or procures to be forged or counterfeited, any trade mark or name used and recorded by any person in connection with his goods, or affixed thereto to distinguish them from the goods of any other person; or any person, association or corporation who shall make use of any trade mark or name, or anything similar thereto, which has been recorded in the office of the Secretary of State for any other person, association or corporation,—with intent to palm off on the public, any goods to which said forged, counterfeit or similar trade mark or name is affixed, as the goods of such person whose trade mark or name is recorded,—is guilty of

a misdemeanor and subject to the penalty therefor provided—it being the intent of this act that any person owning or using a recorded trade mark or name shall be protected in the exclusive use thereof. [Amendment approved March 14, 1913; Laws 1913, p. 426.]

§ 8468. [Repealed.]

By act approved February 24, 1913; Laws, 1913, p. 42.

TRESPASS BY STOCK.

§ 8474.

Provisions not applicable to animals in charge of a herder. See note ante, § 2090.

The provisions of this section and of section 8475, post, merely declare unlawful, and punish as a misdemeanor, the driving or herding of animals upon the uninclosed lands of another when the boundaries are marked as therein provided; they do not annul the rule of civil liability for trespasses in driving or herding one's animals upon the lands of another, whether such lands are protected by an inclosure or not. *Herrin v. Sieben*, 46 Mont. 226, 233, 127 Pac. 323.

Editorial Notes.

Liability of owners of stock herded or permitted to range on the lands of another, though they are not protected by a lawful or any fence. 81 Am. St. Rep. 446.

In highways, duty to fence against animals. 8 Am. Dec. 125.

Trespasses of animals, liability for. 49 Am. Dec. 248.

Trespassing animals, liability of owners of. 28 Am. Rep. 569; 22 L. R. A. 55.

Right to damages against owner of fowls who permits them to trespass on another's land. Ann. Cas. 1913C, 757.

Right to kill trespassing animals. Ann. Cas. 1913C, 970.

Right to kill trespassing animals. 1 Ann. Cas. 193; 16 Ann. Cas. 951.

§ 8475.

Construction of section. See note ante, § 8474.

OFFENSES AGAINST HEALTH AND SAFETY.

§ 8483.

Meaning of term "town." See note ante, § 3202.

Unincorporated town as an entity. See note ante, § 3202.

§ 8524.

Railroad company's duty to keep right of way clear. See ante, § 4310.

If a person is injured by the failure of a railroad operator to comply with section 4310, ante, his damages are compensatory only. *Cooper v. Northern Pac. Ry. Co.*, 212 Fed. 533, 535.

Considered in *John v. Northern Pac. Ry. Co.*, 42 Mont. 18, 37, 32 L. R. A. (N. S.) 85, 111 Pac. 632.

§ 8535.

Meaning of term "town." See note ante, § 3202.

Unincorporated town as an entity. See note ante, § 3202.

The legislature did not intend, by the exception in this section, to include within the prohibited list a ditch of any character more than ten feet deep. Judging from

the history of the section and the prohibitive language employed, it was never intended to apply to a ditch or trench temporarily opened for the purpose of laying sewer-pipe. *McLaughlin v. Bardsen*, 50 Mont. 177, 145 Pac. 954.

"Cht," in mining law, means a surface opening in the ground intersecting a vein. *McLaughlin v. Bardsen*, 50 Mont. 177, 145 Pac. 954.

It is negligence per se for the owner of a mining claim not to place a cover over, or a tight fence around, a mining shaft within the limits of a city or town, or within one mile of such limits. *Conway v. Monidah Trust*, 47 Mont. 269, 278, 132 Pac. 26.

The owner of a mining claim is liable for a failure to place a cover over, or a tight fence around, a mining shaft within the limits of a city or town, or within one mile of such limits; hence, if one is injured by falling into an unguarded shaft on such premises, the owner is answerable in damages, though he did not sink the shaft, and though the injured person was technically a trespasser; but, of course, the evidence must show that the shaft is within the defined limits. *Conway v. Monidah Trust*, 47 Mont. 269, 280, 282, 132 Pac. 26.

§ 8536.

Analogy between statutes. See note ante, § 4289.

This section does not make it obligatory upon mine operators to employ a station-tender at each station; nor does it prohibit the employer from imposing the duty of opening and closing the cage doors upon those who have other duties to perform, where such duties do not interfere with each other. *Maronen v. Anaconda Copper Min. Co.*, 48 Mont. 249, 266, 136 Pac. 968.

This section is a penal statute, and its violation a crime; but the fact that a penalty is attached for its violation does not render the violator immune from civil liability under section 6486, ante. *Maronen v. Anaconda Copper Min. Co.*, 48 Mont. 249, 258, 136 Pac. 968.

This section did not create any right of action, or destroy any defense available at the time of its enactment. *Maronen v. Anaconda Copper Min. Co.*, 48 Mont. 249, 258, 136 Pac. 968.

History of section. *Monson v. La France Copper Co.*, 39 Mont. 50, 59, 133 Am. St. Rep. 549, 101 Pac. 243.

In cases where an employee has a choice of continuing in the employment or of abandoning it, when the employer habitually omits use of the statutory safeguards, the defense of assumption of risk is available to the employer, even though the negligence alleged is the violation of a statutory duty; but the duty imposed on the employer by the statute is a continuing one, and where the employee has no such choice, as where he is in a deep mining shaft and has no means of egress other than that provided by the employer, and must use a mining cage from which the doors are missing, contrary to the provisions of this section, he will be presumed to have submitted to its use from necessity, and, therefore, not to have assumed the attendant risk. *Monson v. La France Copper Co.*, 43 Mont. 65, 71, 114 Pac. 779.

The defense of assumption of risk is based, not upon contract, but on the principle expressed by the maxim, "*Volenti non fit injuria*." *Osterholm v. Boston etc. Min. Co.*, 40 Mont. 508, 526, 107 Pac. 499.

The failure of an employing company to equip a safety-cage in a mine with doors, as required by this section, does not prevent it from interposing the defense of assumption of risk or contributory negligence. The statute does not impose this additional penalty for its omission of duty in this respect; the penalty imposed cannot be augmented by implication. *Osterholm v. Boston etc. Min. Co.*, 40 Mont. 508, 527, 107 Pac. 499.

Construction of the words "men" and "sinking." *Osterholm v. Boston etc. Min. Co.*, 40 Mont. 508, 519, 520, 107 Pac. 499.

Editorial Notes.

Duty of mine owners to prevent injury to their employees. 87 Am. St. Rep. 557.

Liability of a mine owner for injuries to an employee caused by a falling roof. *Ann. Cas.* 1912B, 577.

§ 8544.

Practicing medicine without a certificate. See ante, § 1591.

Editorial Notes.

Medicine and dentistry, power of the states to prohibit practicing of without a license. 23 Am. St. Rep. 25.

Statutes regulating the practice of physicians and surgeons, to whom applicable. 98 Am. St. Rep. 742.

§ 8546.

An allegation of negligence in storing dynamite in a mine, in a quantity greater than three thousand pounds, or in storing that or any other explosive in a mine where, should an explosion accidentally take place, escape by those working in the mine would be cut off, charges the violation of a specific duty imposed by this section, and such a violation is negligence per se. *Westlake v. Keating Gold Min. Co.*, 48 Mont. 120, 128, 130, 136 Pac. 38.

Editorial Notes.

Duty of mine owners to prevent injury to their employees. 87 Am. St. Rep. 557.

Assumption of risk on failure of employer to perform statutory duty. *Ann. Cas.* 1913C, 210.

Liability of mine owner to employee for injuries by premature explosion. *Ann. Cas.* 1913C, 954.

Liability of mine owner for injuries caused by falling of roof of mine. *Ann. Cas.* 1912B, 577.

§ 8547.

Meaning of term "town." See note ante, § 3202.

Unincorporated town as an entity. See note ante, § 3202.

§ 8548.

Meaning of term "town." See note ante, § 3202.

Unincorporated town as an entity. See note ante, § 3202.

INTOXICANTS.

§ 8555. Selling Liquor Within Five Miles of Grading and Other Camps.

Every person who sells, furnishes or gives away any spirituous or malt liquors, wine or cider, or any beverage containing any intoxicating liquors, within five miles of any railroad grade, irrigating ditch, canal or other public works under the course of construction, or on any railroad grade on which track is being laid, or within five miles of any logging camp, saw-mill, mine, stone quarry, or sheep-shearing camp in operation is punishable by imprisonment in the county jail not exceeding sixty days, or a fine not exceeding one hundred (100) dollars or by both such fine and imprisonment. The provisions of this section do not apply to the selling, furnishing or giving away intoxicating liquors, wine or cider within the limits of any town or city, provided, that the word "town" or "city" within the meaning of this section shall include all places and only such places as have a bona fide permanent population of not less than fifty persons over the age of twenty-one years residing within the territory not exceeding one mile square and excluding from such enumeration all persons who have not resided at least one year in such place, and also excluding all employees, owners or agents engaged in any of the above named business; provided, that the provisions of this section shall not apply to any person previously engaged in selling intoxicating liquors at a fixed place of business, established two years prior to the beginning of work in or upon, or the erection or construction, or operation of any of the things enumerated in this act, or to his assigns. [Amendment approved March 5, 1915; Laws 1915, p. 105.]

§ 8556a. Sale of Liquor Near Educational Institution.

(Section 1.) It shall be unlawful for any person, persons, or corporation, to establish or maintain within two thousand feet of the main building of any state institution of the state of Montana, any saloon or place where malt, vinous, or spirituous liquors are sold at retail.

(Section 2.) All boards of county commissioners, and all city and town councils are hereby prohibited from granting any permit or license to any person, persons, or corporation, to establish, conduct, or carry on or maintain any saloon or place where malt, vinous, or spirituous liquors are sold at retail within two thousand feet of any state educational institutions of the state of Montana, and any such permit or license granted in violation of the terms of this act shall be void.

(Section 3.) Any person violating any of the terms of this act shall be deemed guilty of a misdemeanor and punished accordingly. [Approved March 5, 1909; Laws 1909, c. 90, p. 120.]

§ 8556b. Drinking of Intoxicants on Passenger Train.

(Section 1.) Any person who shall drink any intoxicating liquors publicly as a beverage upon any train carrying passengers, except in the buffet, sleeping or dining cars, or who shall be intoxicated upon any such trains operated upon any railroad in the state of Montana, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding five hundred (\$500) dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

(Section 2.) Police power is conferred hereby upon every conductor of a railroad company engaged in operating trains upon lines of railway in

Montana, and it shall be the duty of every conductor while upon duty upon any train or car used for the conveyance of passengers, to arrest every person who shall in his presence, or to his knowledge, violate the provisions of section 1 of this act, and to deliver him or them to a policeman, constable, sheriff or other peace officer at any station where such officer may be found, and it shall be the duty of such officer to make complaint against said person or persons, and a complaint made on information and belief of said officer shall be sufficient.

(Section 3.) That any justice of the peace in any county through which said train shall pass, or on any division of such railroad, shall have jurisdiction of said offense.

(Section 4.) It shall be the duty of every railway company, operating in this state, to post conspicuously in each passenger car such extracts from this act as shall in the judgment of the board of railway commissioners be necessary to advise the public of the existence of this act. [Approved February 25, 1911; Laws 1911, c. 53, p. 89.]

§ 8556c. Opening and Closing Hours of Saloons in Incorporated Cities and Towns—Penalties for Violation of Act.

(Section 1.) It shall be unlawful for any person or persons, firm, or corporation engaged in the business of selling any kind or kinds of spirituous or malt liquors by the glass, or drink in any incorporated city, town, or village, or within one mile of the limits of any city of the first class, to open such place of business for the sale of such liquor at an earlier hour than 8 o'clock in the morning of each and any day; and no such person or persons, firm, or corporation shall sell or give away any such liquors in or about their respective places of business after the hour of 12 o'clock midnight of each or any day, and all such places of business shall be closed between the hours of 12 o'clock midnight and 8 o'clock in the morning of each and every day.

(Section 2.) It shall be unlawful for any person, or persons, firm, or corporation engaged in the business of selling any kind or kinds of spirituous or malt liquors by the glass, or drink in any unincorporated city, or town or village, or elsewhere, except within one mile of the limits of any city of the first class, to open such place of business for the sale of such liquor at any earlier hour than 8 o'clock in the morning of each or any day, and no such person or persons, firm or corporation shall sell or give away any such liquors in or about their respective places of business after the hour of 10 o'clock P. M., and all such places of business shall be closed between the hours of 10 o'clock P. M. and 8 o'clock A. M. of each and every day.

(Section 3.) A violation of any of the provisions of this act shall be deemed a misdemeanor and upon conviction, the offender shall be punished by a fine of not less than fifty dollars and not exceeding two hundred fifty dollars, and persons acting as servants, employees, or agents shall be severally liable in the same manner as their employers or principals.

(Section 4.) Any person convicted a second time for a violation of the provisions of this act shall, in addition to the penalty named in section 3 of this act, be prohibited from the conduct of such business for a period of three months from the day of such conviction, and his county license shall be revoked. And any person convicted a third time for a violation of the provisions of this act shall, in addition to the penalty pre-

scribed in section 3 hereof, be forever barred from applying for, obtaining or holding a retail liquor license within the state of Montana. [Approved March 3, 1915; Laws 1915, c. 59, p. 87.]

§ 8556d. Opening and Closing Hours in Incorporated Towns or Within One Mile of Cities.

(Section 1.) It shall be unlawful for any person or persons, firm, or corporation engaged in the business of selling any kind or kinds of spirituous or malt liquors by the glass or drink in any incorporated city, town or village, or within one mile of the limits of any city of the first class, to open such place of business, or allow such place of business to remain open, for the sale of liquor between the hours of 12 o'clock midnight of each and every Saturday night and the hour of 1 o'clock P. M. of each and every Sunday, and no such person or persons, firm, or corporation shall sell or give away any liquors in or about their respective places of business on Sunday between the hours aforesaid, and all such places of business shall be and remain closed on Sunday between the hours aforesaid, and during the hours when said places are closed the curtains and screens of the doors and windows shall be open and notice shall be placed upon the front door that such place is closed.

(Section 2.) It shall be unlawful for any person or persons, firm or corporation engaged in the business of selling any kind or kinds of spirituous or malt liquors by the glass or drink in any *[un-]incorporated city, town, or village, or elsewhere, except within one mile of the limits of any city of the first class, to open such place of business for the sale of such liquor at any earlier hour than 8 o'clock in the morning of each or any day, and no such person or persons, firm or corporation shall sell or give away any liquors in or about their respective places of business between the hours of 10 o'clock P. M. on Saturday night and 1 o'clock P. M. of the following Sunday, and all such places of business shall be and remain closed between the hours of 10 o'clock P. M. on Saturday night and of the following Sunday.

(Section 3.) A violation of any of the provisions of this act shall be deemed a misdemeanor, and upon conviction the offender shall be punished by a fine of not less than fifty dollars (\$50) and not exceeding two hundred fifty dollars (\$250); and persons acting as servants, employees, or agents shall be severally liable in the same manner as their employers or principals.

(Section 4.) Any person convicted a second time for a violation of the provisions of this act shall, in addition to the penalty named in section 3 of this act, be prohibited from the conduct of such business for a period of three months from the day of such conviction; and any person convicted a third time for a violation of the provisions of this act shall, in addition to the penalty prescribed in section 3 hereof, be forever barred from applying for, obtaining, or holding a retail liquor license within the state of Montana. [Approved March 5, 1915; Laws 1915, c. 68, p. 95.]

*(Note by the Secretary of State: The word here intended to be used, as appears in the bill as originally drawn by the

introducer thereof, was unincorporated. The use of the word "incorporated" is evidently inadvertent.)

§ 8565.

Accusation for removal of sheriff from office, sufficiency of. See note post, § 9006.

§ 8576.

Libeling one pursuing an unlawful business. See note ante, § 3602.

§ 8577.

A person who, in the presence of a large number of women and children, conducts himself in a boisterous, offensive, and disorderly manner, and uses foul and unseemly language, is guilty of a misde-

meanor, and, under section 9057, post, is subject to arrest by any officer who is present, even without a warrant; but no more force can be used for that purpose than is necessary. *Rand v. Butte Electric Ry. Co.*, 40 Mont. 398, 404, 417, 107 Pac. 87.

§ 8582. Carrying Concealed Weapons.

Every person who within the limits of any city or town carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slung-shot, sword cane, or knuckles made of any metal or hard substance, or other deadly weapon, is punishable by imprisonment in the county jail for a term not exceeding six months or by a fine not exceeding five hundred (\$500) dollars or by imprisonment in the penitentiary for a period not exceeding five (5) years. This section shall not apply to peace officers or persons summoned in their aid in the discharge of their official duty, nor to the carrying of arms in one's premises or place of business. This act shall not be construed as repealing any other provisions of section 8586 of the Revised Codes of Montana, 1907. [Amendment approved March 1, 1911; Laws 1911, p. 118.]

Meaning of term "town." See note ante, § 3202.

Unincorporated town as an entity. See note ante, § 3202.

"Town," when used in a statute as intended to convey the sense only of incorporated town, has always the qualifying word with it. *State ex rel. Powers v. Dale*, 47 Mont. 231, Ann. Cas. 1914D, 227, 131 Pac. 670.

Editorial Notes.

What are weapons within offense of

carrying concealed weapons. 34 L. R. A. (N. S.) 1174.

What constitutes "deadly weapon." Ann. Cas. 1912A, 1328.

Liability for carrying concealed weapon as dependent on condition of weapon. Ann. Cas. 1913E, 513.

*Carrying weapon as article of merchandise as within prohibition of statute against carrying concealed weapons. Ann. Cas. 1912A, 1207.

Construction of exemption of officers of law from statute against carrying weapons. Ann. Cas. 1914A, 253.

§ 8591a. Sale of Toy Weapons and Explosives Prohibited.

(Section 1.) Any person who shall sell, trade, exchange or give away, or offer to sell, trade, exchange or give away, or who shall have the possession of, what is known as toy pistols, toy cannons, cap pistols, explosive canes or other devices or appliances for the use of blank cartridges or caps containing chlorate of potash mixture or other explosive substance; or any blank cartridge, paper caps or other explosive substance prepared for, used in, or intended for use in toy pistols, cap pistols, explosive canes or other such appliances, shall be guilty of a misdemeanor.

(Section 2.) Toy pistols, toy cannons, cap pistols, explosive canes, and all such devices and appliances designated in the preceding section are hereby declared to be a public nuisance, and it shall be the duty of every officer authorized to make arrests, to seize every such toy pistol, article and device and bring the same before a committing magistrate.

(Section 3.) The magistrate before whom such toy pistol, article or device is brought must cause the public destruction of the same and no person owning or claiming to own any such toy pistol, article or device shall have any right of action against any person or against the state, county or city for the value of such article or for damages for the destruction thereof.

(Section 4.) It shall be the duty of every mayor of every town or city in the state, to cause this act to be diligently enforced and to cause the police officers of his city or town to arrest and make complaint against any

and all persons offending against any of the provisions of this act. [Approved March 2, 1911; Laws 1911, c. 70, p. 133.]

CRIMES AGAINST PROPERTY.

§ 8592.

Deposit of county money in a bank, when a felony. See note ante, § 3003.

It is a felony for a county treasurer to keep county moneys on a general deposit in a bank without the security required by section 3003, ante. *Yellowstone County v. First Trust and Sav. Bank*, 46 Mont. 439, 449, 128 Pac. 596.

§ 8620.

To constitute a burglarious entry, the act of entry must itself be a trespass, and the information should, therefore, negative the idea that the defendant had the right to enter. *State v. Mish*, 36 Mont. 170, 122 Am. St. Rep. 343, 92 Pac. 459.

An information charging burglary need not allege the time of the day when the offense was committed. *State v. Copenhagen*, 35 Mont. 344, 89 Pac. 61.

The degree of an offense is a matter of proof, and is for the jury to determine under proper instructions; but when the pleader makes the specific charge of a burglary in the night-time, he unnecessarily narrows the scope of inquiry and must be held to proof of the charges made. *State v. Copenhagen*, 35 Mont. 344, 89 Pac. 61.

§ 8629.

The changing of a writing from a non-negotiable instrument into a negotiable promissory note, done with criminal intent, constitutes forgery. *State v. Mitton*, 37 Mont. 376, 127 Am. St. Rep. 732, 96 Pac. 926.

A juror's certificate, void because it does not bear the seal required by the statute, is not subject of forgery. *In re Farrell*, 36 Mont. 254, 92 Pac. 785.

A person charged with forgery, in fraudulently making an instrument, cannot be convicted by showing that he altered the instrument. *State v. Mitton*, 36 Mont. 383, 92 Pac. 969.

Not every alteration of one of the instruments mentioned in this section amounts to forgery. In order that an alteration may constitute forgery, it must be material. *State v. Mitton*, 36 Mont. 382, 92 Pac. 969.

It is therefore necessary that the information set forth the particulars in which the instrument is alleged to have been altered, so that the court may say, as a matter of law, whether the alteration is of a character such as to constitute the crime of forgery. *State v. Mitton*, 36 Mont. 382, 92 Pac. 969.

To warrant a conviction for uttering a forged note, it is not necessary that the

forgery, in the first instance, should have been committed by the defendant. If, knowing that the instrument was a forgery, he passed it as genuine with felonious intent, he is guilty of forgery. *State v. Mitton*, 37 Mont. 372, 127 Am. St. Rep. 732, 96 Pac. 926.

Editorial Notes.

What is forgery. 22 Am. Dec. 306; 119 Am. St. Rep. 317.

Signing of writing, what sufficient to amount to forgery. 55 Am. Rep. 651.

What may be the subject of forgery. 8 Am. St. Rep. 466.

Uttering sufficient to sustain conviction for forgery. 119 Am. St. Rep. 317.

Alteration of figures on check as forgery. Ann. Cas. 1912D, 240.

Order for delivery of goods as subject of forgery. Ann. Cas. 1914C, 469.

Necessity that name of person intended to be defrauded or to whom instrument was uttered or passed be alleged in indictment for forgery. Ann. Cas. 1912C, 1143.

Forging and uttering as one offense. 1 Ann. Cas. 308.

Worthless instruments. 24 L. R. A. 33.

Making or altering mere memorandum. 54 L. R. A. 794.

§ 8642.

Arrest of judgment. See note post, § 9353.

Power of appellate court. See note post, § 9417.

Sufficiency of information for grand larceny. See note post, § 8645.

One cannot be convicted of larceny except upon the taking of the personal property of another, as described in this section. A partner cannot commit larceny of the funds or property of the partnership of which he is a member; but, until an agreement to form a partnership ripens into a consummation of the agreement, a person who contemplates becoming a partner may become the bailee of his prospective partner, and, if he feloniously appropriates the latter's property to his own use, he may be convicted of larceny as bailee. *State v. Brown*, 38 Mont. 309, 315, 99 Pac. 954.

An indictment charging the defendant with larceny as bailee must contain an averment of the bailment, but the particulars of the bailment need not be

averred. *State v. Brown*, 38 Mont. 309, 313, 99 Pac. 954.

An indictment charging the defendant with larceny, as bailee, in the words of the statute, and in the form prescribed by section 9148, post, is sufficient. It is not open to the objection that it fails to describe the character of the bailment. *State v. Brown*, 38 Mont. 309, 313, 99 Pac. 954.

If the state has convicted a defendant of the crime of grand larceny, but the evidence just does not justify such conviction, and the Attorney General suggests that the prosecution was conducted under the wrong section of the code, the case will be remanded for a new trial, or for such other proceedings as the state may take. *State v. Thomas*, 46 Mont. 468, 128 Pac. 588.

An instruction in a grand larceny case which omits the element of felonious or criminal intent, is erroneous. *State v. Peterson*, 36 Mont. 109, 92 Pac. 302.

Where a party let defendant have a check on the agreement that he should use the proceeds for cashing checks and repay the amount on a certain day, defendant was not guilty of larceny as bailee when he used it for other purposes and did not repay it. As the transaction was a loan for exchange and the title passed to defendant. *State v. Karri* (Mont.), 149 Pac. 956.

Editorial Notes.

What constitutes larceny. 57 Am. Dec. 271; 88 Am. St. Rep. 559; 30 Am. Rep. 159.

Intent essential to the crime of larceny. 51 Am. Rep. 312.

Bringing stolen goods from another jurisdiction as larceny in forum. Ann. Cas. 1912A, 392.

Taking property under mistaken belief as to ownership and afterward converting to own use as larceny. Ann. Cas. 1912B, 340.

Animals, when subjects of larceny. 47 Am. Rep. 765.

What constitutes asportation. 29 L. R. A. (N. S.) 38.

Indictment or information for larceny, description of property in. 22 Am. St. Rep. 154.

Sufficiency of indictment for larceny of animal and of proof in support thereof with respect to description of animal. 17 Ann. Cas. 735.

Possession of stolen property, effect of as evidence of larceny. 70 Am. Dec. 447.

Admissibility of proof of possession by defendant of other stolen property. 10 Ann. Cas. 1089.

§ 8644.

The failure of the court, in a grand larceny case, to instruct the jury that

the taking or appropriation must have been done with a felonious intent, will work a reversal of a judgment of conviction. *State v. Peterson*, 36 Mont. 109, 92 Pac. 302.

§ 8645.

Arrest of judgment. See note post, § 9353.

Habeas corpus for one charged with grand larceny. See note post, § 9645.

Who may appear in aid of prosecution. See note ante, § 1787.

This section refers to live animals only; if the carcasses of heifers, dressed for beef, are found concealed on a cattle range, defendants, charged with stealing the heifers, can be convicted only upon evidence showing beyond a reasonable doubt that they killed, or took part in killing, the animals. *State v. Keeland*, 39 Mont. 506, 512, 104 Pac. 513.

An information charging that the defendant "did then and there willfully, unlawfully and feloniously take, steal, drive, lead and entice away one steer, branded (indicating the form of brand) on the left thigh, the property" of a person named, with a felonious intent on the part of the defendant to deprive the true owner thereof, and to steal the same, charges "grand larceny," as defined in this section. *State v. Biggs*, 45 Mont. 400, 402, 123 Pac. 410.

If several different articles have been stolen in substantially the same transaction; if the different asportations are prompted by one design, one purpose, one impulse, they are a single act, without regard to time, and the value of the different articles may be aggregated in order to make out a charge of grand larceny. This is an exception to the general rule stated in the note to section 8646, post. In re *Jones*, 46 Mont. 122, 125, 126 Pac. 929.

§ 8646.

Habeas corpus for one charged with grand larceny. See note post, § 9645.

Where there are two or more distinct larcenies, the general rule is, that they cannot be aggregated so as to make the value of the property stolen sufficient to constitute grand larceny, where the value of the property taken at any one time was not sufficient for that purpose. The exception to this rule is stated in the note to section 8645, ante. In re *Jones*, 46 Mont. 122, 125, 126 Pac. 929.

§ 8650.

The "stray law" of 1903, penalizing the taking up of stray animals, is unconstitutional in that its title is insufficient. *State v. Cunningham*, 35 Mont. 547, 90 Pac. 755.

§ 8655.

In a prosecution for larceny, in bringing into this state personal property stolen in an other state or country, the form of the charge may be the same as for a larceny in this state, without reference to anything done elsewhere; such matters being evidentiary and open to proof without specific allegation. *State v. Willette*, 46 Mont. 326, 328, 127 Pac. 1013.

Editorial Notes.

Bringing stolen goods from another jurisdiction as larceny in forum. *Ann. Cas.* 1912A, 392.

§ 8656.

Guardian, having trust funds, is not

guilty of larceny, when. *Smith v. Smith*, 45 Mont. 535, 125 Pac. 987.

§ 8659.

A rule made by a public service corporation, having a franchise to furnish electricity, that it will not serve electricity to anyone who has stolen gas from its mains, it not appearing, however, that it has any gas franchise, until all reasonable bills therefor have been paid, is not one that the company has a right to make. It is a crime to steal gas, but the company has no more right to use its electricity franchise to protect its private gas business than it would have to protect its private merchandise business. *State v. Butte E. & P. Co.*, 43 Mont. 118, 125, 115 Pac. 44.

§ 8662. Receiver of Stolen Property.

Every person who for his own gain or to prevent the owner from again possessing his own property buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the state prison not exceeding five years or in a county jail not exceeding six months; and it is presumptive evidence that such property was stolen if the same consists of jewelry, silver or plated ware or articles of personal ornament, brass, bronze or copper fixtures, fittings or parts of machinery, or electrical supplies, or what is commonly termed junk, if purchased or received from a person under the age of twenty-one years unless said property is sold by said minor at a fixed place of business carried on by said minor or his employer. [Amendment approved March 9, 1915; *Laws* 1915, p. 300.]

Editorial Notes.

Liability of participant in larceny for receiving property stolen. *Ann. Cas.* 1912B, 1211.

Immateriality of erroneous allegation as to person injured. See post, § 9153.

To make out the offense covered by this section, the evidence must establish that the property in question was stolen; that the defendant bought it or received it knowing it to have been stolen; and that he did so for his own gain, or to prevent the owner from regaining possession of it. *State v. Moxley*, 41 Mont. 402, 407, 110 Pac. 83.

The crime of receiving stolen property, knowing it to have been stolen, may be proved by circumstantial evidence. *State v. Moxley*, 41 Mont. 402, 408, 110 Pac. 83.

In a prosecution for the crime of receiving stolen property, there is a failure of proof unless the ownership is proved as alleged. *State v. Moxley*, 41 Mont. 402, 409, 110 Pac. 83.

In an information under this section, value need not be alleged, and proof of some value is enough. The penalty does not depend upon value. *State v. Moxley*, 41 Mont. 402, 409, 110 Pac. 83.

Editorial Notes.

Liability of participant in larceny for receiving property stolen. *Ann. Cas.* 1912B, 1211.

Necessity of alleging name of thief in indictment or information for receiving stolen property. *Ann. Cas.* 1914B, 174.

Admissibility of evidence of possession of other stolen goods in prosecution for receiving stolen goods. *Ann. Cas.* 1913D, 166.

§ 8683.

It is not necessary that an indictment for obtaining money by false pretenses should allege that the person upon whom the fraud was attempted believed the representation, nor that the fraud was completed. *State v. Phillips*, 36 Mont. 116, 92 Pac. 299.

The crime of attempting to obtain money by a false pretense is complete whenever the false representation is made, with the requisite criminal intent,

under such circumstances that, if the thing of value had been obtained, a deprivation would have been the result. *State v. Phillips*, 36 Mont. 116, 92 Pac. 299.

Editorial Notes.

What is "confidence game." *Ann. Cas.* 1912A, 758.

Illegality of purpose of person defrauded as defense in prosecution for false pretenses. *Ann. Cas.* 1913B, 92.

Representation as to condition or quality of animal as criminal false pretense. *Ann. Cas.* 1913C, 273.

§ 8689. Sale or Removal of Mortgaged Chattels.

Every person, after mortgaging any personal property, except railroad locomotives, railroad engines, rolling stock of a railroad, steamboat machinery in actual use and vessels, removes or causes to be removed, or permits the removal of such mortgaged property from the county, where it was situated at the time it was mortgaged, without the written consent of the mortgagee, with intent to deprive the mortgagee of his claim thereto and interest therein; and every person who, after mortgaging any personal property of any kind or character whatsoever, voluntarily sells or transfers any such mortgaged property without the written consent of the mortgagee, and with the intent to defraud such mortgagee of his claim thereto and interest therein, or with the intent to defraud the purchaser thereof, of any money or thing of value, is guilty of larceny. [Amendment approved February 11, 1909; Laws 1909, p. 8.]

§ 8697a. Wearing of Military Uniforms by Persons not Entitled to.

Every person, other than an officer or enlisted man of the national guard of the state of Montana, or of any other state, or of the United States army or navy, marine corps or revenue service or forest service, or instructor, or student in a military school, or inmate of any veterans' or soldiers' home, who, at any time wears the uniform of the United States army or navy or national guard, or any part of such uniform, or a uniform or part of a uniform similar thereto, within the bounds of the state of Montana, is guilty of a misdemeanor, and if found guilty of such offense shall be punishable by a fine of not less than one hundred nor more than two hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment; provided, that nothing in this act shall be construed as prohibiting persons of the theatrical profession from wearing such uniform in any playhouse or theater while actually engaged in following said profession; and provided, that nothing in this act shall be construed as prohibiting the uniform rank of civic societies parading or traveling in a body or assembling in a lodge-room; and provided further, that whenever the national guard, or any part thereof is in active service, or is called into active service, no civic organization or member thereof shall parade or appear in uniform in the locality where said national guard is in service. [Approved March 3, 1909; Laws 1909, c. 58, p. 64.]

§ 8697b. Fraud in Sale of Giant or Blasting Powder.

Any person or corporation engaged in the business of selling blasting or giant powder by whatever name the same shall be known containing nitroglycerin, or equivalent explosive compound, in any form who shall sell or vend any such blasting powder upon the representation that the same contains a certain percentage or proportion of nitroglycerin, or equivalent

explosive compound, or who being applied to for blasting powder containing a certain percentage or proportion of nitroglycerin or equivalent explosive compound shall sell or deliver any such blasting powder, containing a less percentage or proportion of nitroglycerin, or equivalent explosive compound, than represented or than such powder as was applied for, shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) nor less than one hundred dollars (\$100). [Approved March 8, 1909; Laws 1909, c. 124, p. 176.]

§ 8697c. Taking, Using or Disposing of Stray Animals.

Any person, persons, corporation or company, who shall take up or retain in his or their possession, any mare, gelding, colt, foal, filly, mule, jack or jennet, the owner of which cannot with reasonable diligence be found, or of which he is not the owner, without the owner's knowledge or consent, or who shall in any manner restrain from liberty for the purpose or purposes of using or making use of such animal without the knowledge and consent of the owner, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment. [Laws 1909, c. 126, p. 179.]

§ 8697d. Fortune-telling, Clairvoyance, etc., Forbidden.

Be it enacted by the Legislative Assembly of the State of Montana:

(Section 1.) That any person or persons who shall advertise or otherwise represent, pretend, or profess to be a fortune-teller, clairvoyant, palmist or astrologist, or who shall, whether designating or representing himself or herself to be such or not, advertise or otherwise represent, pretend, or profess to be able to foretell events with reference to any manner of business transaction, courtship, marriage or divorce, or to be able to locate lost or stolen property, friends or relatives, or to locate or find mines, veins, ores, metals or subterranean waters, or who shall pretend or represent himself or herself to be able to tell or read, or predict, the fortune, future, present or past condition of any person or persons by means of fortune-telling, clairvoyancy, palmistry or astrology, or any other means or device or shall pretend or represent himself or herself to be able to, or promise to affect the condition or future, or to bring about or effect the desires or fortune of any person or persons whomsoever, by such or any of such means or methods, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment in the county jail for a period of not less than one nor more than three months, or by both such fine and imprisonment. Provided, however, that nothing in this act shall be construed to prohibit or restrict investigation and experiment in the mental science, psychical research, theatrical exhibitions, and other public performance from the public stage.

(Section 2.) That any person who publishes, distributes, circulates, or causes to be published, distributed or circulated any dodgers, circulars, pamphlets or advertisements holding out or advertising any person as a fortune-teller, clairvoyant, palmist or astrologist or as being able to do any

of the acts or things prohibited by section 1 of this act, shall be guilty of a misdemeanor and punished by a fine of not less than ten nor more than one hundred dollars.

(Section 3.) That the proprietor, editor, manager or any other person in charge of any newspaper or printing establishment, publishing or advertising any of the things prohibited by this act shall be guilty of a violation of the provisions of section 2 hereof. [Approved March 6, 1909; Laws 1909, c. 102, p. 138.]

§ 8697e. Obtaining Credit by False Statements.

Any person who, either individually or in a representative capacity (1) shall knowingly make a false statement in writing to any person, firm or corporation engaged in banking or other business respecting his own financial condition or the financial condition of any firm or corporation with which he is connected as member, director, officer, employee or agent, for the purpose of procuring a loan, or credit in any form or an extension of credit from the person, firm or corporation to whom such false statement is made, either for his own use or for the use of the firm or corporation with which he is connected as aforesaid, or (2) having previously made, or having knowledge that another has previously made, a statement in writing to any person, firm or corporation engaged in banking or other business respecting his own financial condition or the financial condition of any firm or corporation with which he is connected as aforesaid, shall afterwards procure on faith of such statement from the person, firm or corporation to whom such previous statement has been made, either for his own use or for the use of the firm or corporation with which he is so connected, a loan or credit in any form, or an extension of credit, knowing at the time of such procuring, that such previously made statement is in any material particular false, with respect to the present financial conditions of himself or of the firm or corporation with which he is so connected, or (3) shall deliver to any note broker or other agent for the sale or negotiation of commercial paper any statement in writing, knowing the same to be false, respecting his own financial condition or the financial condition of any firm or corporation with which he is connected as aforesaid, for the purpose of having such statement used in the furtherance of the sale, pledge or negotiating of any note, bill or other instrument for the payment of money made, or indorsed or accepted, or owned in whole or in part, by him individually or by the firm or corporation with which he is connected; or (4) having previously delivered, or having knowledge that another has previously delivered to any note broker or other agent for the sale or negotiation of commercial paper, a statement in writing respecting his own financial condition, or the financial condition of any firm or corporation with which he is connected as aforesaid, shall afterward deliver to such note broker or other agent for the purpose of sale, pledge or negotiation on faith of such statement, any note, bill or other instrument for the payment of money made, or indorsed, or accepted, or owed in whole or in part, by himself individually or by the firm or corporation with which he is so connected, knowing at the time that such previously delivered statement is in any material particular, as to the present financial condition of himself or such firm or corporation is punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding five years or both. [Approved March 6, 1909; Laws 1909, c. 96, p. 126.]

§ 8697f. Manufacture or Sale of "Shoddy" and Mattresses and Couches Made Thereof—Penalty.

(Section 1.) No person, firm or corporation, shall, within this state, sell, offer for sale, or manufacture, what is commonly known as shoddy, or sell, offer for sale or manufacture mattresses, pillows, couches, couch pads or lounges, containing shoddy in whole or in part.

(Section 2.) The term "shoddy," as used in this act, shall include all material made or manufactured of rags, wearing apparel, clothing, rugs, carpets or blankets.

(Section 3.) It shall be the duty of all boards and departments of health, health officers, or officials discharging similar duties in the state of Montana, to enforce the provisions of this chapter, and they shall have power in the performance of their official duties to enter any store or manufacturing establishment where the articles mentioned in section 1 are manufactured or are for sale, and make such examination as they deem necessary in order to ascertain whether or not the provisions of this chapter are being violated.

(Section 4.) It shall be the duty of the Attorney General and prosecuting attorneys of the counties of this state to prosecute all cases arising under the provisions of this chapter.

(Section 5.) Every person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty (\$50) dollars nor more than five hundred (\$500) dollars, or by imprisonment in the county jail for not less than thirty days, nor more than six months, or both such fine and imprisonment. [Approved March 10, 1915; Laws 1915, c. 146, p. 377.]

§ 8697g. False Advertising—Penalty.

(Section 1.) False advertising as used in this act shall mean any false statement regarding the quality or price of goods, wares, or merchandise, in any advertisement, circular, letter, poster, handbill, display card, or other written or printed matter, by means of which such goods, wares or merchandise are offered for sale to the public.

(Section 2.) It shall be unlawful for any person, corporation, copartnership, or association of individuals to make any false statement regarding the quality or price of goods, wares or merchandise in any advertisement, circular, letter, poster, handbill, display card, or other written or printed matter, by means of which such goods, wares or merchandise are offered for sale to the public.

(Section 3.) Any person violating any of the provisions of this act by means of false advertising, as herein defined, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty, nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment.

(Section 4.) All acts and parts of acts in conflict herewith are hereby repealed. [Approved March 8, 1915; Laws 1915, c. 117, p. 256.]

§ 8697h. Sales by Fakers—Penalty.

(Section 1.) Any person who shall sell or attempt to sell any articles, goods, wares or merchandise of any kind upon the streets of any city or town by means of any false representations, trick, devise, or lottery, or by

means of any game of chance, for the purpose and with intent to obtain a greater or better price for such article or goods than their actual retail price or value upon the market, shall be deemed a faker, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than ten days nor more than fifty days. [Approved March 8, 1915; Laws 1915, c. 116, p. 256.]

§ 8697i. Using Automobile Without Consent of Owner.

Any chauffeur or other person, who without the consent of the owner shall take, use, operate or remove or cause to be taken, used, operated, or removed from a garage, stable or other building or place, or from any place or locality on a private or public highway, park, parkway, street, lot or field, inclosure or space, an automobile or motor vehicle and operate or drive or cause the same to be operated or driven for his own profit, use or purpose, is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars or more than five hundred dollars, or imprisoned in the county jail, not exceeding six months, or both. [New section approved February 25, 1915; Laws 1915, c. 27, p. 36.]

§ 8697j. Abandonment of Sheep by Herder.

Every person who, having, by virtue of his employment as herder, driver or otherwise, the charge or custody of any sheep, shall willfully abandon the same, or allow them to stray from his charge or custody, shall, upon conviction, be punished by a fine of not less than one hundred dollars, or by imprisonment of not less than three months nor more than one year, or by both such fine and imprisonment; provided, that if the person so in the charge or custody of such sheep has given to the owner of such sheep, or his authorized agent, at least five days' notice of his intention to quit his employment, he shall not be deemed to have abandoned such sheep, within the meaning of this act, by leaving the same after the expiration of such period. [Approved March 8, 1909; Laws 1909, c. 116, p. 163.]

§ 8715.

Prior to the enactment of this section the statutory provisions in regard to the reception of deposits by an insolvent bank did not include private bankers. In re Wisner, 36 Mont. 298, 92 Pac. 958.

Editorial Notes.

Criminal liability of officer of insolvent bank for receiving deposit therein as dependent on his actually receiving deposit in person. Ann. Cas. 1912B, 316.

§ 8718.

The capital stock of a foreign corporation may consist in whole or in part of something other than money, and the state, having failed, in a prosecution against a foreign banking corporation for filing a false report of its affairs, to sustain the burden of proving that the capital stock of the corporation in question had not been paid in money or any other property, an order directing a verdict of acquittal was proper. State v. Clements, 37 Mont. 317, 96 Pac. 498.

§ 8753a. Trespass on Real Estate—Destruction of Fences—Starting Fire.

Any person tearing down, breaking, or injuring any fence or other inclosure, for the purpose of entering upon the land or premises of another without the consent of the owner or occupant; any person who shall build a fire upon the land or premises of another within any inclosure, or who shall sever from such land or premises any tree, grass, or other product thereof, or shall take therefrom anything attached or appurtenant thereto, without the consent of the owner or occupant; and any person who shall hunt upon any inclosed land or premises where there is posted in a conspicuous

place a sign or warning reading, "No hunting allowed on these premises," or a sign or warning reading, "No trespassing allowed on these premises," without the consent of the owner, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than ten dollars, nor more than five hundred dollars, or imprisonment not exceeding six months in the county jail, or by both such fine and imprisonment; and shall also be liable to the person injured for all damages occasioned thereby. [Approved February 26, 1915; Laws 1915, c. 36, p. 53.]

§ 8765.

Meaning of term "town." See note ante, § 3202.

Unincorporated town as an entity. See note ante, § 3202.

§ 8771.

Meaning of term "town." See note ante, § 3202.

Unincorporated town as an entity. See note ante, § 3202.

GAME AND FISH LAWS.**§ 8782. Closed Season for Deer.**

Any person, who shall between the fifteenth day of December of any year and the first day of October of the following year, willfully shoot, wound, kill or capture, or cause to be shot, wounded, killed or captured, any deer, or who in the open season of any calendar year, shoots, wounds, kills or captures, or causes to be shot, wounded, killed or captured, more than two deer of any age, sex or variety, is guilty of a misdemeanor and upon conviction of any of the provisions of this section shall be fined in any sum of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment in the county jail not less than sixty days nor more than one year, or by both such fine and imprisonment at the discretion of the court. [Amendment approved March 8, 1915; Laws 1915, p. 220. Prior amendments: Laws 1913, p. 342; Laws 1909, p. 110.]

§ 8783. Killing of Moose, Buffalo, Caribou, Antelope and Beaver Prohibited.

Any person who willfully shoots or kills, or causes to be shot or killed, any moose, bison, buffalo, caribou, antelope or beaver, shall be punished by imprisonment in the county jail for not less than six months nor more than two years, or shall be fined not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment. Provided, that any taxpayer and bona fide owner of real estate in this state may upon his own premises or upon the right of way of his own ditches kill or destroy beaver when necessary for the protection of his dams, irrigating ditches and trees, and to prevent the overflowing of water on his premises. Any person who willfully shoots or kills, or causes to be shot or killed, any quail, Chinese pheasants, Hungarian pheasants or turtle dove, shall be punished by imprisonment in the county jail for a term of not less than thirty days nor more than twelve months, or by a fine of not less than twenty-five dollars nor more than one hundred dollars or by both such fines and imprisonment. [Amendment approved March 4, 1909; Laws 1909, p. 110.]

§ 8784. Closed Season for Elk.

(Section 1.) Any person who between the fifteenth day of December and the first day of October of the following year, willfully shoots or kills or causes to be shot or killed any elk, or who in a single open season shall shoot, kill or cause to be shot or killed more than one elk, shall be punished

by imprisonment in the county jail for a period or not less than three months nor more than twelve months, or by a fine of not less than one hundred (\$100) dollars, nor more than one thousand (\$1,000) dollars, or by both such fine and imprisonment.

(Section 2.) Any person who willfully shoots, wounds, or kills, or causes to be shot, wounded, or killed, any elk before the first day of October nineteen hundred and eighteen, upon conviction thereof shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail of not less than six months nor more than one year, or by both such fine and imprisonment; provided, however, that the provisions of this section shall not apply and be in force during the open season in the following counties and parts of counties in this state: Sweetgrass, Stillwater, Park, Gallatin, Madison, Teton, and Flathead; and that portion of Beaverhead county lying east of the Oregon Short Line Railroad between the point on said railroad near Willis postoffice where said railroad enters said Beaverhead county on the north, and the town of Monida in said county, lying south of the Gillmore and Pittsburg Railroad, and also those portions of Powell county lying west of the North Fork of the Big Blackfoot river, and North of the main Big Blackfoot river, west of the confluence of the two streams, and also all that portion of said county drained by the waters of the South Fork of the Flathead river, and those portions of Missoula county lying east of Belmont creek from its source, and north of the Big Blackfoot river, east of the confluence of the two streams; and also all that portion of said county drained by the waters of Swan river. [Amendment approved March 5, 1915; Laws 1915, c. 75, 76, pp. 102, 103. Prior amendment: Laws 1913, c. 33, p. 45; Laws 1909, c. 81, p. 111.]

§ 8784a. Closed Season for Rocky Mountain Sheep or Goat.

It shall be unlawful to kill or capture, at any place in Montana, any Rocky Mountain sheep or Rocky Mountain goat before the said first day of October, 1918. Any person who violates the provisions of this section shall be punished by the payment of a fine of not less than two hundred (\$200) dollars nor more than one thousand (\$1,000) dollars. [Amendment approved March 5, 1915; Laws 1915, p. 104.]

§ 8785. Sale of Beaver Skins—Penalty.

Any person who shall sell or offer for sale the skin or skins of any beaver within this state, shall be guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term of not less than ninety days nor more than twelve months, or by a fine of not less than fifty dollars nor more than one thousand dollars, or by both such fine and imprisonment. [Amendment approved March 4, 1909; Laws 1909, p. 111.]

§ 8787. Closed Season for Grouse and Other Game Birds.

Any person who between the first day of October of any year, and the first day of September of the following year, in the counties of Custer, Dawson, Richland, Sheridan, Valley, Phillips, Rosebud, Big Horn, Fallon and Prairie; or between the sixteenth day of October of any year, and the fifteenth day of September of the following year in any other portion of the state of Montana, willfully shoots or kills, or causes to be shot or killed, any grouse, prairie chicken, fool-hen, sage-hen, pheasant or partridge, or who during the open season in any portion of the state of Mon-

tana, shoots or kills, or causes to be shot or killed, more than five grouse, or prairie chicken, or fool-hens, or sage-hens, or pheasants or partridges, in any one day, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than ninety days, nor more than twelve months, or by both such fine and imprisonment. [Amendment approved March 8, 1915; Laws 1915, p. 220. Prior amendment; Laws 1909, p. 110.]

§ 8788. Closed Season for Water Fowl.

Any person who between the first day of January of any year and the first day of September of the same year, willfully shoots or kills, or causes to be shot or killed, any wild geese, wild ducks or brant, or shall during the open season, shoot or kill, or cause to be shot or killed more than twenty wild ducks in any one day, shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for a term not exceeding three months or less than one month, or by both such fine and imprisonment. [Amendment approved March 8, 1915; Laws 1915, p. 221. Prior amendment; Laws 1909, p. 110.]

§ 8792.

This section, as amended, is incorporated in section 1981, ante.

§ 8793.

See § 1981, ante.

§ 3793a. Possession of Seines, Nets, or Other Devices for Capturing Fish.

(Section 1.) It is unlawful for any person or persons to have in their possession or under their control any seine, net, or other similar device for capturing fish. A seine or net found in any vehicle, at the camp, or on the premises of any person shall be prima facie evidence that the said seine, net, or similar device belongs to the person or persons in possession of such vehicle, or the person or persons occupying said camp or premises; provided, that nothing herein contained shall apply to the owners of private fish-ponds as defined under the statute, nor to a person or persons having an unexpired seine or net license as provided for in the statutes of Montana; provided, further, that nothing herein contained shall apply to the use, by any person, of a landing net used in connection or in addition to pole, line and hooks, in fishing for game fish.

(Section 2.) Any person or persons convicted for a violation of this act shall be deemed guilty of a misdemeanor and punished by a fine of not less than twenty-five dollars (\$25) and such seine, net, or similar device shall be confiscated and destroyed after conviction of the defendant by the officer making arrest of such defendant or defendants. [Approved March 3, 1915; Laws 1915, c. 60, p. 89.]

See § 1981, ante.

§ 8796. Dynamiting or Poisoning Fish.

If any person or persons shall use any giant powder or other explosive compounds, or any corrosive or narcotic poison, or other deleterious substance for the purpose of catching, stunning or killing fish, he shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not less than two hundred (\$200) dollars nor more than five hundred (\$500) dollars, or by imprisonment in the state prison not less than one year, nor more than three years, or both such fine and imprisonment. [Amendment approved March 8, 1915; Laws 1915, p. 240.]

§§ 8797, 8798.

See § 1985, ante.

§ 8801.

See § 1987, ante.

§ 8799.

See § 1986, ante.

§ 8802.

See § 1987xx, post.

§ 8822a. Meaning of Word "Sale."

The word "sale" as used in the statute laws of this state touching the sale of game and fish, the sale of which is prohibited by law, does and shall be considered to mean:

1. A contract by which for a pecuniary consideration, called a price, one transfers an interest in either game or fish.

2. A contract, by which for an article or thing of value, one transfers, barter or exchanges an interest either in game or fish. [Approved March 18, 1913; Laws 1913, c. 126, p. 475.]

§ 8822b. Costs of Prosecutions for Violation of Game and Fish Laws.

(Section 1.) That in all cases where there is a prosecution for violation of the fish and game laws, and costs have been incurred then, a cost bill shall be prepared and be presented to the state board of examiners and if by them allowed the state treasurer shall thereupon pay same, out of the state game and fish fund, to the county treasurer of the county wherein such costs were incurred.

(Section 2.) That all acts and parts of acts contrary to the provisions of this act are hereby repealed.

(Section 3.) That this act shall be in force and effect on and after sixty days from its passage and approval. [Approved March 9, 1915; Laws 1915, c. 138, p. 300.]

§ 8828.

A prosecution in a police court, for vagrancy, must be instituted and conducted in the name of the state. State (ex rel. City of Butte) v. District Court, 37 Mont. 204, 95 Pac. 841.

Vagrancy, what constitutes and prosecutions therefor. 137 Am. St. Rep. 940.

Editorial Notes.

Vagrancy, what punishable as. 38 Am. Rep. 643.

§ 8834.

Meaning of term "town." See note ante, § 3202.

Unincorporated town as an entity. See note ante, § 3202.

§ 8834a. Use of Silencers or Mufflers on Firearms.

It shall be unlawful for any person to take into the fields or forests, or to have in their possession, while out for the purpose of hunting any wild animals or birds, any device or mechanism, designed to silence or muffle, or minimize the report of any firearm, whether such device or mechanism be separated from or attached to any firearm.

Any person violating the provisions of this act shall upon conviction be subject to a fine of not less than fifty (\$50) dollars or more than three hundred (\$300) dollars or by imprisonment in the county jail not less than twenty (20) days nor more than ninety (90) days or by both such fine and imprisonment.

This act shall be in full force and effect from and after its passage and approval. [Approved March 8, 1915; Laws 1915, c. 108, p. 240.]

§ 8836.

Fences. See ante, §§ 2082-2091.

Liability for herding or driving animals upon another's land. See note ante, §§ 2090, 8474.

§ 8866.

This section is unconstitutional, in that by leaving it to the different societies to supply, in their secret work, the description of the articles which it is unlawful to use or wear, the legislature delegated legislative powers to the orders mentioned. *State v. Holland*, 37 Mont. 398, 96 Pac. 719.

§ 8894.

Evidence insufficient to establish the crime of an attempt to commit robbery. *State v. Hanson*, 49 Mont. 361, 368, 141 Pac. 669.

§ 8895.

In view of this section and of section 8859, ante, and of section 8902, post, the court has authority to fix the punishment of one found guilty of an attempt to commit the infamous crime against nature, at fifteen years. *State v. Stone*, 40 Mont. 88, 92, 105 Pac. 89.

Where the evidence is not before the appellate court, it will be presumed that the trial court properly fixed the punish-

ment on a conviction for burglary. *State v. Mish*, 36 Mont. 175, 122 Am. St. Rep. 343, 92 Pac. 459.

§ 8897.

A sentence to fifty years' imprisonment, of one convicted of robbery who is also found to have been previously convicted in another state of burglary, is warranted by the law. *State v. Paisley*, 36 Mont. 248, 92 Pac. 566.

Editorial Notes.

Necessity that former conviction be alleged and proved before court can impose penalty for second offense. *Ann. Cas.* 1912A, 1000.

Enhancing penalty when crime committed by habitual criminals or prior offenders. 34 L. R. A. 398; 24 L. R. A. (N. S.) 432.

§ 8902.

Punishment of attempt to commit crime against nature. See ante, § 8895.

Punishment of crime against nature. See ante, § 8359.

CRIMINAL PROCEDURE.

§ 8911.**Editorial Notes.**

Arrest and detention by military authorities. L. R. A. 1915B, 988.

§ 8918a. Confessions Obtained by Duress or Inhuman Practices.

(Section 1.) It shall be unlawful for any sheriff, constable, police officer or any persons charged with the custody of anyone accused of crime, of whatever nature, or with the violation of a municipal ordinance, to frighten or attempt to frighten by threats, torture, or attempt to torture, or, resort to any means of an inhuman nature, or practice what is commonly known as the "third degree" in order to secure a confession from such person.

(Section 2.) A violation of the provisions of section 1 of this act shall constitute a misdemeanor, and shall be punished by a fine not exceeding five hundred (\$500) dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [Approved March 4, 1911; Laws 1911, c. 89, p. 158.]

§ 8924.

Status of policeman as an officer. See note ante, § 3250.

§ 8939.

Status of policeman as an officer. See note ante, § 3250.

§ 8928.

It is only in cases where no examination and commitment have been had or made by a magistrate that it is necessary to apply in writing to the district court for leave to file the information. *State v. Byrd*, 41 Mont. 585, 591, 111 Pac. 407.

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§ 8941.

The fact that the defendant, in a prosecution for murder, had the deceased arrested, and confined in peace proceedings, does not supply any motive for the murder; on the contrary, it tends to show the absence of motive. *State v. Suitor*, 43

Mont. 31, 44, Ann. Cas. 1912C, 230, 114 Pac. 112.

§ 8963.

Accusation for removal of sheriff from office, sufficiency of. See note post, § 9006.

§ 8967.

Provisions for the state militia. See ante, §§ 1045-1110.

In case the governor deems it advisable to call the state militia into active service to suppress an insurrection in a county he may, under this section, though he

need not, place the troops in charge of the local authorities. In re McDonald (In re Gillis), 49 Mont. 454, 461, L. R. A. 1915B, 988, 143 Pac. 947.

An organized militia exists in this state. In re McDonald (In re Gillis), 49 Mont. 454, 477, L. R. A. 1915B, 988, 143 Pac. 947.

Editorial Notes.

Arrest and detention by military authorities. L. R. A. 1915B, 988.

§ 8972.

Office of state senator is not a "judicial office." See note ante, § 524.

Construction. See note post, § 9006.

REMOVAL OF OFFICERS.

§ 9006.

Intent is presumed. See note ante, § 8112.

Duties of sheriff. See note ante, §§ 3010, 3030, 8962.

A comparison of sections 8992 and 9006 shows that the former was intended to apply to those cases only in which the accused has been guilty of willful or corrupt misconduct or malfeasance; the latter, to those derelictions which are the result of incompetency or inattention to official duties. State v. District Court, 44 Mont. 318, 323, Ann. Cas. 1913B, 396, 119 Pac. 1103.

One accused under section 8992, ante, is entitled to a trial by jury; but one accused, under this section, 9006, is not so entitled. The question of guilt or innocence lies exclusively with the judge, and, no appeal or method of review being provided for, the supreme court cannot control or coerce the judgment of the lower court. State v. District Court, 44 Mont. 318, 328, Ann. Cas. 1913B, 396, 119 Pac. 1103.

A police judge, who accepts fees or compensation other than that provided in section 3241, ante, though he acted in ignorance of the law, or in good faith and without guilty intent or even under the advice of the Attorney General, may be deprived of his office. State v. District Court, 44 Mont. 318, 324, Ann. Cas. 1913B, 396, 119 Pac. 1103.

Under this section, an officer is subject to removal for delinquency, either in demanding excessive fees, or in the performance of the duties enjoined by law, without reference to whether he acts willfully and corruptly or not. State v. District Court, 44 Mont. 318, 324, Ann. Cas. 1913B, 396, 119 Pac. 1103.

The district court may remove a police judge from office for illegally collecting a fee from a defendant, upon approving a bond filed in support of an appeal from

a judgment of conviction for the violation of a city ordinance. State v. District Court, 45 Mont. 205, 209, 122 Pac. 270.

A police judge is not entitled to any fee in a case arising out of the violation of a city ordinance, either from the city or from the defendant. State v. District Court, 45 Mont. 205, 209, 122 Pac. 270.

In a charge to obtain the removal of a police judge for collecting illegal fees, it is unnecessary to allege that he acted willfully, intentionally, and corruptly. State v. District Court, 44 Mont. 318, 326, Ann. Cas. 1913B, 396, 119 Pac. 1103.

A sheriff's neglect of official duty is an offense public in its nature, under section 8107, ante; and an accusation looking to his removal from office for such neglect is sufficient in form, where it is entitled in the name of the state "on the accusation" of certain persons, if, from the whole body of the charge, it is apparent that a public proceeding and not a private action was instituted by it. State v. Driscoll, 49 Mont. 558, 560, 144 Pac. 153.

An accusation against a sheriff for neglect of duty, in failing to suppress a riot, and asking his removal from office, does not necessarily have to be made in the language of section 8565, ante. A statement of facts from which the existence of a riot was inferable is sufficient. State v. Driscoll, 49 Mont. 558, 565, 144 Pac. 153.

One of the methods provided by law for the removal of an officer from office is a summary proceeding, as prescribed in this section, initiated upon a written accusation verified by the oath of "any person." State v. Driscoll, 49 Mont. 558, 561, 144 Pac. 153.

Editorial Notes.

Removal of officers for cause. 135 Am. St. Rep. 250.

Failure to enforce laws as ground for removal of public officer. Ann. Cas. 1913D, 32.

Exacting illegal fees or compensation as misconduct for which public officer may be removed. Ann. Cas. 1912C, 147.

What constitutes "willful misconduct" in office. Ann. Cas. 1912C, 1083.

Removal of public officer for acts of deputy or subordinate. Ann. Cas. 1912D, 1082.

Good faith or intent of public officer in committing wrongful act as af-

fecting right of removal therefor. Ann. Cas. 1913B, 400.

Right of public officer holding for fixed term to notice and hearing before removal for cause. Ann. Cas. 1913D, 1209.

Right of appointing power to remove officer summarily when term of office is not fixed. Ann. Cas. 1912C, 374.

Right to remove officers summarily. 15 L. R. A. 95.

VENUE.

§ 9020.

Where a person is shot in one county but dies in another, and is charged with murder in the former county, it is unnecessary to allege where the deceased died; and, though it is alleged that he died in the county where the fatal shot

was fired, while the evidence shows that he died in another county, there is no variance. That term refers to a disagreement between the allegations, in the information and the proof, with reference to some matter that is legally essential to the charge. *State v. Crean*, 43 Mont. 47, 54, Ann. Cas. 1912C, 424, 114 Pac. 603.

STATUTE OF LIMITATIONS.

§ 9026.

Time of offense of murder or manslaughter. See note post, § 9152.

§ 9028.

Construction of exception. See note post, § 9029.

Demurrer that prosecution is barred. See note post, § 9200.

This is a general statute of limitations applicable to misdemeanors, and an exception to it cannot be enlarged beyond what its plain language imports. *State v. Clemens*, 40 Mont. 567, 569, 107 Pac. 896.

The mere absence of a defendant from the state is no excuse for delay in filing an information against him. *State v. Clemens*, 40 Mont. 567, 571, 107 Pac. 896.

Where a person committed a crime while within this state and afterward departed therefrom, an information not filed within one year after the commission of the crime is barred under this section. *State v. Clemens*, 40 Mont. 567, 571, 107 Pac. 896.

§ 9029.

The concluding words of this section, "and no time during which the defendant is not an inhabitant of, or usually resident within this state, is a part of the limitation," apply only to a defendant who was not within the state when the crime with which he is charged was committed. They do not have any reference to a defendant who commits a crime while within this state, and afterward leaves the state. *State v. Clemens*, 40 Mont. 567, 570, 107 Pac. 896.

ARREST AND EXAMINATION.

§ 9040.

Status of policeman as an officer. See note ante, § 3250.

§ 9041.

Status of policeman as an officer. See note ante, § 3250.

§ 9057.

Arrest without warrant. See note ante, § 8577.

Editorial Notes.

Right of officer to break open doors and arrest without warrant on sus-

picion of felony. Ann. Cas. 1912B, 574.

§ 9058.

In an action to recover damages for false imprisonment, it is proper to refuse the defendant an instruction to the effect that the law gives a private person the right to make an arrest when the person arrested has committed, or is about to commit, a public offense, in his presence, and that, if the jury believes that the plaintiff had taken from the defendant property of the latter which he was attempting to recover at the time of the alleged imprisonment, verdict should be for the defendant. *Kroeger v. Passmore*,

36 Mont. 504, 14 L. R. A. (N. S.) 988, 93 Pac. 805.

§ 9068.

In an action to recover damages for false imprisonment, it is proper to refuse the defendant an instruction to the effect that the law gives a private person the right to make an arrest when the person arrested has committed, or is about to commit a public offense, in his presence, and that, if the jury believes that the plaintiff had taken from the defendant property of the latter which he was at-

tempting to recover at the time of the alleged imprisonment, verdict should be for the defendant. *Kroeger v. Passmore*, 36 Mont. 504, 14 L. R. A. (N. S.) 988, 93 Pac. 805.

§ 9090.

On a preliminary examination, all that is required of the county attorney is to submit proof sufficient to show probable cause to believe the defendant to be guilty of the charge. In re *Jones*, 46 Mont. 122, 126, 126 Pac. 929.

INDICTMENT AND INFORMATION.

§ 9105.

Mandatory nature of provisions and procedure. See note post, § 9194.

§ 9107.

Mandatory nature of provisions and procedure. See note post, § 9194.

§ 9108.

Amending, by striking out surplusage. See note ante, § 8146.

Amendment after plea. See note ante, § 8416.

§ 9109.

Witnesses discovered subsequent to the filing of the information may be examined at the trial though their names are not indorsed on the information. The fact that the district attorney, either through carelessness or ignorance, has failed to indorse the names of witnesses on the information is not ground for setting aside the information. *State v. McDonald* (Mont.), 149 Pac. 279.

§§ 9140-9143.

Witnesses whose names are not indorsed on the indictment may testify at the trial where the indictment was not found upon their testimony. But if the names of all of the witnesses upon whose testimony the indictment is found, the indictment will be set aside upon timely motion. *State v. McDonald* (Mont.), 149 Pac. 279.

§ 9147.

Sufficiency of information. See notes post, §§ 9148, 9156.

Sufficiency of information for murder, where the deceased was assaulted, exposed to inclement weather, and neglected. *State v. Rees*, 40 Mont. 571, 575, 107 Pac. 893.

Allegations sufficient for a common-law indictment for murder suffice for an in-

formation under the code. *State v. McGowan*, 36 Mont. 422, 93 Pac. 552.

An information charging an attempt to obtain money by false pretenses, although defective in form and containing immaterial averments, is sufficient. *State v. Phillips*, 36 Mont. 118, 92 Pac. 299.

If a person of common understanding would, from the reading of an information, know that the defendant is charged with murder in the first degree, the defendant will be presumed to have a like knowledge and be held not prejudiced by the use of peculiar phraseology. *State v. McGowan*, 36 Mont. 422, 93 Pac. 552.

Editorial Notes.

Form and sufficiency of indictment or information. 3 Am. St. Rep. 279.

Sufficiency of contra pacem conclusion of indictment. 14 Ann. Cas. 413.

Necessity that indictment be brought into open court. 26 L. R. A. (N. S.) 683.

Indictment and information, charge of crime, when may be in the language of the statute. 94 Am. Dec. 253.

Sufficiency of indictment charging commission of offense "on or about" certain date. 7 Ann. Cas. 775.

Charging commission of offense at future or impossible date. Ann. Cas. 1913B, 1043; 2 L. R. A. (N. S.) 251.

Sufficiency of indictment charging statutory offense to have been committed during time which began before statute was enacted. Ann. Cas. 1913D, 487.

Necessity of averment in indictment negating exception in statute upon which prosecution is based. Ann. Cas. 1913B, 135.

§ 9148.

Sufficiency of indictment for larceny, as bailee. See note ante, § 8642.

Section 27 of article VIII of the Constitution requires all prosecutions to be

conducted in the name and by the authority of the state, but an information need not necessarily contain a specific allegation that the prosecution is so conducted, where it is in the form prescribed by this section; where it meets the requirements of section 9156; post, and where it alleges that the defendant is accused "in the name and on behalf of the state of Montana." *State v. Barry*, 45 Mont. 582, 585, 124 Pac. 774.

Allegations sufficient for a common-law indictment for murder are sufficient for an information under the code. *State v. Hayes*, 38 Mont. 219, 221, 99 Pac. 434.

An information alleging that at a specified time and place defendant did "willfully, unlawfully, feloniously, premeditatedly and of his malice aforethought, kill and murder" a designated person, is sufficient to charge murder, though it does not set forth facts showing how and by what means the actual killing was accomplished. *State v. Hayes*, 38 Mont. 219, 221, 99 Pac. 434.

§ 9149.

Sufficiency of information. See note ante, § 9148.

When special demurrer may be interposed. See note post, § 9200.

Interpreted with reference to an indictment for forgery. *State v. Mitton*, 36 Mont. 381, 92 Pac. 969.

Sufficiency of information charging an attempt to obtain money by false pretenses. *State v. Phillips*, 36 Mont. 118, 92 Pac. 299.

§ 9151.

The inhibition of this section is directed to pleadings which charge more than one distinct offense, not to a pleading which, in each of two counts, charges the same offense; hence, an information charging forgery in two counts, the first by the false making of the instrument, and the second by uttering it, is not demurrable. *State v. Mitton*, 37 Mont. 370, 127 Am. St. Rep. 732, 96 Pac. 926.

Editorial Notes.

Joinder of two or more offenses in one indictment. 58 Am. Dec. 238; 9 L. R. A. 182.

Joinder of charges of rape and incest. 41 Am. Rep. 249.

Election between two or more counts in indictment, prosecutor, when will be compelled to make. 92 Am. Dec. 660.

§ 9152.

Limitation of time for prosecution for murder or manslaughter. See ante, § 9026.

It is not necessary that murder or manslaughter should have been committed

upon the precise date laid in the information for either crime, where it appears, from the evidence that it was committed at any time prior to the filing of the information. *State v. Vanella*, 40 Mont. 326, 341, 20 Ann. Cas. 398, 106 Pac. 364.

§ 9153.

In prosecution for receiving stolen property, ownership must be proved as alleged. See note ante, § 8662.

§ 9156.

Sufficiency of prosecution in name of state. See note ante, § 9148.

This section, and sections 9145 and 9148, ante, were intended to relax the technical common law, and to simplify the procedure to the end that regard to substance, rather than form, should be the rule of interpretation. *State v. Brown*, 38 Mont. 309, 312, 99 Pac. 954.

Stating facts, charging a crime, in the form of participial clauses, though that is a method of pleading not to be commended, does not render an information abortive. The proper way, however, to make the charge is by direct allegation. *State v. Pemberton*, 39 Mont. 530, 532, 104 Pac. 556.

It is sufficient in an information for robbery, to charge that the taking was accomplished "with" force and fear, instead of "by means of force and fear." The word "with," in this connection, is equivalent to the expression "by means of." *State v. Pemberton*, 39 Mont. 530, 533, 104 Pac. 556.

An information for robbery is sufficient, with respect to the crime, if it enables a person of ordinary understanding to know what is intended to be charged. *State v. Pemberton*, 39 Mont. 530, 532, 104 Pac. 556.

Instance of a complaint charging a sale of liquor, in violation of the local option law, and meeting all the requirements of the statute. *State v. O'Brien*, 35 Mont. 494, 10 Ann. Cas. 1006, 90 Pac. 514.

§ 9157.

Waiver of objections. See note post, § 9208.

An information charging an attempt to obtain money by false pretenses, though defective in form and containing immaterial averments, is held sufficient to sustain a conviction, when it is apparent that the defendant has suffered no prejudice. *State v. Phillips*, 36 Mont. 118, 92 Pac. 299.

Superfluous words or sentences, in an information charging murder in the first degree, may be disregarded if, without them, the offense is sufficiently charged.

State v. McGowan, 36 Mont. 427, 93 Pac. 552.

§ 9164.

An information for the larceny of money need not describe the money alleged to have been taken. State v. Hall, 45 Mont. 498, 502, 125 Pac. 639.

Editorial Notes.

Indictment or information for larceny, description of property in. 22 Am. St. Rep. 154.

§ 9172.

While the offense of kidnaping includes the minor offenses of false imprisonment and assault in the third degree, the court need not so formulate the charge that the jury may find the defendant guilty of a lower offense or of an included offense, where the evidence is such as to show that defendant is guilty of the offense charged or is entitled to an acquittal. State v. McDonald (Mont.), 149 Pac. 279.

§ 9174.

Amending, by striking out surplusage. See note ante, § 8146.

Editorial Notes.

Constitutionality of statutes permitting amendment of indictments. Ann. Cas. 1913A, 402.

§ 9193.

Mandatory nature of provisions and procedure. See note post, § 9194.

The motion must be in writing, subscribed by the defendant or his counsel, and must specify the particular ground of objection. State v. Chevigny, 48 Mont. 382, 384, 138 Pac. 257.

Editorial Notes.

Necessity that criminal information filed by prosecuting attorney be under oath. 7 Ann. Cas. 983.

§ 9194.

The defendant, in a criminal case, may insist that the provisions of sections 9105, 9107, and 9193, ante, be observed, as they are all mandatory, but he need not do so. If he does not, the court is authorized and required by this section, 9194, to proceed upon the assumption that all antecedent requirements have been observed. This section, 9194, is not less mandatory than are the others, and, if the defendant does not invoke it, at the proper time and in the way pointed out by it, he will thereafter not be heard to complain. State v. Chevigny, 48 Mont. 382, 384, 138 Pac. 257.

Where the defendant enters a plea to an information, without a written motion to set it aside, and consents to an immediate trial, he thereby waives his right to make any objections to the information. State v. Vinn, 50 Mont. 27, 144 Pac. 772.

Editorial Notes.

Time and method of objecting to indictment on ground of duplicity. 10 Ann. Cas. 1004.

§ 9200.

Waiver of objections. See note post, § 9208.

If a charge of crime is not direct and certain, it is open to attack on special demurrer. State v. Pemberton, 39 Mont. 530, 533, 104 Pac. 556.

Where an information for a misdemeanor was filed more than one year and ten months after the time of the alleged offense, and it contains an allegation that, on or about that time, the defendant left the state and afterward resided without the state, the defendant, under the fifth subdivision of this section, may properly demur to the information on the ground that it appears upon the face thereof that the prosecution is barred by the statute of limitations. State v. Clemens, 40 Mont. 567, 571, 107 Pac. 896.

§ 9201.

Waiver of objections. See note post, § 9208.

Where an objection to the information must be taken by demurrer, and it is so taken, the objection is waived, unless it is distinctly specified. State v. Tudor, 47 Mont. 185, 187, 131 Pac. 632.

§ 9203.

An order sustaining a defendant's demurrer, in a criminal case, amounts to entering a judgment in favor of the defendant. State v. Gemmell, 45 Mont. 210, 211, 122 Pac. 268.

§ 9204.

Though an indictment is quashed for invalidity, the state is not thereby precluded from proceeding by information for the same offense. State v. Vinn, 50 Mont. 27, 144 Pac. 772.

§ 9208.

In view of sections 9157, 9200, 9201, and 9208, the defendant is required to raise all questions touching the form of the charge made against him, not going to the jurisdiction of the court or the sufficiency of the facts, by demurrer, and if he fails to do so, he must be conclusively presumed to have waived them. State v. Tudor, 47 Mont. 185, 188, 131 Pac. 632.

If an information is attacked in the trial court by motion in arrest of judgment, all questions arising upon alleged defects in the information, except that of want of jurisdiction and the sufficiency of the facts to state a public offense, are waived. *State v. Pemberton*, 39 Mont. 530, 533, 104 Pac. 556.

If an accused person pleads to an information, without interposing the objection,

by motion, that, having already been prosecuted by indictment, he cannot be prosecuted by information, that objection is waived. *State v. Vinn*, 50 Mont. 27, 144 Pac. 772.

An objection that an information charges two distinct offenses is waived unless it is raised by special demurrer. *State v. Rodgers*, 40 Mont. 248, 251, 106 Pac. 3.

PLEA.

§ 9209.

The provisions of this section are not applicable in an action for wrongful death under section 6486, ante, where a violation of section 8536, ante, is charged. *Maronen v. Anaconda Copper Min. Co.*, 48 Mont. 249, 261, 136 Pac. 968.

§ 9212.

The plea of not guilty of the offense charged puts in issue the allegations of prior convictions, as well as the other allegations in the information. *State v. Gordon*, 35 Mont. 465, 90 Pac. 173.

JURY.

§ 9244.

Peremptory challenges in civil cases. See note ante, § 6740.

§ 9247.

A substantial compliance with the law is required in the work of procuring a jury. Anything less will vitiate such work. *State v. Groom*, 49 Mont. 354, 358, 141 Pac. 858.

Case clearly within the provisions of this section. *State v. Groom*, 49 Mont. 354, 357, 141 Pac. 858.

A sheriff will not be permitted to summon only such veniremen as suits his whim or caprice. To do so would allow him to defeat the constitutional guaranty of a speedy trial by an impartial jury. *State v. Groom*, 49 Mont. 354, 358, 141 Pac. 858.

A challenge to the panel must be sustained where the sheriff has intentionally omitted to serve one or more of the jurors drawn, if the accused raises the objection. *State v. Groom*, 49 Mont. 354, 358, 141 Pac. 858.

It is not every deviation from the strict letter of the law in drawing or returning a jury that will furnish ground for a challenge to the panel. The departure must

be a material one. *State v. Groom*, 49 Mont. 354, 359, 141 Pac. 858.

Editorial Notes.

Right to interpose challenge to array in absence of statute. *Ann. Cas.* 1912A, 1137.

§ 9249.

An exception to the challenge to a jury panel in a criminal case is, in effect, a demurrer and admits all the facts stated to be true. *State v. Groom*, 49 Mont. 354, 357, 141 Pac. 858.

§ 9251.

Where all parties treat a challenge to the panel as raising an issue of fact under this section, the supreme court will treat the matter as though an issue had been raised by a denial of the challenge. *State v. Groom*, 49 Mont. 354, 357, 141 Pac. 858.

In a criminal case, where all parties have apparently treated an exception to a challenge to the jury panel as raising an issue of fact under this section, the court will treat the matter as though an issue had been raised by a denial of the challenge. *State v. Groom*, 49 Mont. 354, 357, 141 Pac. 858.

TRIAL.

§ 9271.

This section is mandatory in character. Specifications of error relating to instructions cannot be considered on appeal unless the record shows that the alleged errors were specifically pointed out at the settlement of the instructions, and the exceptions are incorporated in a bill of exceptions, settled as provided by law.

State v. Thomas, 46 Mont. 468, 128 Pac. 588.

The fourth paragraph of this section, prohibiting a reversal for error in instructions, unless pointed out and incorporated in a bill of exceptions, is mandatory; hence, in a criminal case, where the record on appeal does not contain a bill of exceptions, error in instructions cannot be

considered. *State v. Cook*, 42 Mont. 329, 331, 112 Pac. 537.

It is still obligatory upon the trial court, in a criminal case, to deliver its instructions in writing, in the absence of a waiver of the parties. *State v. Tudor*, 47 Mont. 185, 190, 131 Pac. 632.

General requests and objections are to be disregarded both by the trial court and by the supreme court. The particular ground of objection to a proposed instruction must specifically specify wherein it is insufficient or does not state the law. *State v. Hall*, 45 Mont. 498, 517, 125 Pac. 639.

The defendant, in a criminal case, is bound by instructions to which he does not object. *State v. Crean*, 43 Mont. 47, 60, Ann. Cas. 1912C, 424, 114 Pac. 603.

If a party does not offer a good instruction, and fails to point out any defect in that of the court, he cannot be heard to say that the trial court erred to his prejudice; and the supreme court cannot, under such circumstances, grant a reversal. *State v. Hall*, 45 Mont. 498, 517, 125 Pac. 639.

A party cannot on appeal complain of the modification of an instruction where no objection was made and no exception was taken in the trial court. *State v. Vanella*, 40 Mont. 326, 343, 20 Ann. Cas. 398, 106 Pac. 364.

An objection that instructions of the trial court, in a criminal case, were oral will be disregarded on appeal if the record does not show how the instructions were delivered, whether orally or in writing. *State v. Tudor*, 47 Mont. 185, 190, 131 Pac. 632.

A defendant who fails to make objection to any portion of the charge, or to any action of the trial court in its settlement during trial, will not, on appeal, be heard to complain of error therein, or of any omission by the court to submit any special instruction. *State v. Stone*, 40 Mont. 88, 93, 105 Pac. 89.

Instructions in a prosecution for robbery, there being also allegations of prior convictions in another state, held not ground for reversal, though, perhaps, they were improper. *State v. Paisley*, 36 Mont. 251, 92 Pac. 566.

§ 9282.

In a prosecution for murder, the burden of proving circumstances of mitigation or justification is on the defendant. *State v. Byrd*, 41 Mont. 585, 596, 111 Pac. 407.

In a prosecution for murder, the duty of showing excuse, or palliating circumstances, or of adducing evidence of facts sufficient to raise in the minds of the jurors a reasonable doubt of the defendant's guilt, is upon the accused. *State v. Leakey*, 44 Mont. 354, 366, 120 Pac. 234.

While this section declares the circumstances under which the burden of proof shifts to the defendant, he is not, at any time, required to bear a greater burden than to go forward with his proofs far enough to create in the minds of the jurors a reasonable doubt as to his guilt. The burden is upon the state, from the beginning to the end of the trial, to prove the facts necessary to establish the crime; the burden is not on the defendant to disprove them. *State v. Halk*, 49 Mont. 173, 175, 141 Pac. 146.

Where the evidence on the part of the prosecution, in a case of homicide, tends to show that the killing amounted to murder, the burden is upon the defendant to prove circumstances of mitigation, or that justified or excused the killing; but, concerning the quantum of proof, if he raises a reasonable doubt of his guilt, he should be acquitted. *State v. Crean*, 43 Mont. 47, 55, Ann. Cas. 1912C, 424, 114 Pac. 603.

Editorial Notes.

Necessity that motive be proved in prosecution for murder. Ann. Cas. 1912C, 236.

Presumption of intent to kill arising from use of deadly weapon in manner not ordinarily employed. Ann. Cas. 1912A, 107.

Burden of proof in prosecution for homicide with respect to issue of self-defense. Ann. Cas. 1912C, 47.

§ 9290.

To be an accomplice, participation in guilt is necessary. He must be an associate in the crime. *State v. Wakely*, 43 Mont. 427, 438, 117 Pac. 95.

A mere player at one of the games prohibited by section 8416, ante, is not an accomplice, and, in a prosecution against another for conducting such a game, it is not necessary that the player's testimony be corroborated. *State v. Wakely*, 43 Mont. 427, 438, 117 Pac. 95.

It is a sufficient corroboration of the testimony of an accomplice that the evidence, independent of his testimony, has enough probative value in it to warrant a submission of it to the jury for a finding as to the guilt of the defendant. *State v. Biggs*, 45 Mont. 400, 406, 123 Pac. 410.

Evidence of accomplice, in larceny, sufficiently corroborated. *State v. Van*, 44 Mont. 374, 387, 120 Pac. 479.

Evidence, disregarding that of an accomplice, insufficient to sustain a conviction of grand larceny. *State v. Lawson*, 44 Mont. 488, 492, 120 Pac. 488.

In a larceny case, the testimony of an accomplice will not support a conviction unless corroborative. *State v. McCarthy*, 36 Mont. 235, 92 Pac. 521.

A person through whom a litigant attempts to corruptly influence a member of

a jury panel is, under the circumstances of the case, held not an accomplice whose testimony it is necessary to corroborate before the litigant can be found guilty of contempt. *State v. District Court*, 37 Mont. 191, 199, 15 Ann. Cas. 743, 95 Pac. 593.

§ 9305.

Editorial Notes.

Effect of provision that jury shall determine the law and the facts in libel cases. 51 L. R. A. (N. S.) 369.

§ 9314.

Instructions in a prosecution for robbery, there being also allegation of prior convictions in another state, held not ground for reversal, though, perhaps, they were improper. *State v. Paisley*, 36 Mont. 251, 92 Pac. 566.

§ 9320.

It must affirmatively appear that one charged with a felony was present when the verdict was received; but this may be shown by every fair intendment of the record. *State v. De Lea*, 36 Mont. 537, 93 Pac. 814.

Editorial Notes.

Necessity for presence of accused at trial. 28 Am. Dec. 629; 68 Am. Dec. 219.

Waiver of right by accused to be present at rendition of verdict. 13 Ann. Cas. 1213; 21 L. R. A. (N. S.) 56.

§ 9321.

The purpose of the provision that the names of the jurors must be called by the clerk when their verdict is delivered is to insure their presence before delivery of the verdict. *State v. De Lea*, 36 Mont. 534, 93 Pac. 814.

§ 9322.

Where the defendant, in a criminal case, relies upon the defense of insanity, the jury should be told that they may find him "not guilty by reason of insanity." *State v. Crowe*, 39 Mont. 174, 184, 18 Ann. Cas. 643, 102 Pac. 579.

§ 9324.

In the absence of testimony, it will be presumed on appeal that the trial court, in a burglary case, had evidence before it

justifying a finding that, if guilty at all, the defendant was guilty of an attempt to commit burglary in the night-time, which constitutes the first degree of the offense, and that the punishment inflicted was proper. *State v. Mish*, 36 Mont. 168, 175, 122 Am. St. Rep. 343, 92 Pac. 459.

The degree of burglary is a matter of proof, and is for the jury to determine under proper instructions. *State v. Copenhaver*, 35 Mont. 344, 89 Pac. 61.

§ 9325.

Construed with reference to mere informality in verdict, where the matter of prior convictions was involved. *State v. Gordon*, 35 Mont. 466, 90 Pac. 173.

The provision of this section, that the verdict of the jury upon a charge of previous conviction may be, "we find the charge of previous conviction true," is not mandatory, but directory merely. *State v. Gordon*, 35 Mont. 466, 90 Pac. 173.

It is immaterial whether the crime for which the defendant is alleged to have been previously convicted in another state is a felony in that state, if the offense is such that, if committed in this state, it would subject the offender to imprisonment in the state prison. In charging a prior conviction, therefore, it is sufficient to allege the fact of the defendant's former conviction of a named offense, indicating the court which rendered the judgment and the date thereof. *State v. Paisley*, 36 Mont. 247, 92 Pac. 566.

A judgment of conviction will not be reversed for a mere informality of the verdict, finding the defendant guilty of robbery and also "guilty of prior conviction," instead of following the language of this section, "we find the charge of previous conviction true." *State v. Gordon*, 35 Mont. 464, 90 Pac. 173.

§ 9326.

Murder in the first degree includes manslaughter. *State v. Crean*, 43 Mont. 47, 53, Ann. Cas. 1912C, 424, 114 Pac. 603.

An information charging murder, when stripped of the terms conveying the idea of deliberation, premeditation and malice, sufficiently charges manslaughter, and the accused may be found guilty of the lesser offense. *State v. Crean*, 43 Mont. 47, 53, Ann. Cas. 1912C, 424, 114 Pac. 603.

Where an information makes the specific charge of a burglary in the night-time, the pleader thereby unnecessarily narrows the scope of inquiry, and he must prove the charge as made. *State v. Copenhaver*, 35 Mont. 344, 89 Pac. 61.

NEW TRIAL.

§ 9350.

Impeachment of verdict in civil cases. See note ante, § 6794.

New trial in civil action, for verdict claimed to be too small in amount. See note ante, § 6794.

A new trial cannot, in a prosecution for a violation of section 8416, ante, be granted for misconduct of the jury, during their deliberations, in examining a court calendar and in discovering that there were two other cases against the defendant for the same offense, where the only evidence of such misconduct is that of the jurors themselves. It must be shown by other evidence. *State v. Wakely*, 43 Mont. 427, 438, 117 Pac. 427.

The impeachment of verdicts, by jurors, should not be tolerated further than the statute permits. *Sutton v. Lowry*, 39 Mont. 462, 471, 104 Pac. 545.

Editorial Notes.

Improper demonstrations or remarks by spectators as ground for new trial. 121 Am. St. Rep. 511.

Separation of jury, when avoids their verdict. 60 Am. Rep. 73; 24 L. R.

A. (N. S.) 776; 31 L. R. A. (N. S.) 1005.

Necessity for presence of accused at trial. 28 Am. Dec. 629; 68 Am. Dec. 219.

New trial for misconduct of jury as resting in discretion of trial court. Ann. Cas. 1912D, 1018.

Use of intoxicating liquors by jury as ground for new trial. Ann. Cas. 1912A, 1322.

Presumption of prejudice from separation of jury. Ann. Cas. 1914A, 737.

Effect on verdict of information as to facts given to jury by one of their number. Ann. Cas. 1912B, 155.

Right to new trial for newly discovered evidence which was not in existence when trial was had. Ann. Cas. 1913E, 147.

Newly discovered evidence of contradictory statements made by witness as ground for new trial. Ann. Cas. 1912D, 856.

What is cumulative evidence within rule excluding it when offered as ground for new trial. Ann. Cas. 1913D, 157.

ARREST OF JUDGMENT.

§ 9353.

A motion in arrest of judgment, upon a conviction of grand larceny, is properly denied, where each count of the information is sufficient. *State v. Van*, 44 Mont. 374, 384, 120 Pac. 479.

Editorial Notes.

Objections to evidence as ground for motion in arrest of judgment. Ann. Cas. 1913E, 72.

Legal effect of order sustaining motion in arrest of judgment. Ann. Cas. 1912A, 975.

JUDGMENT.

§ 9357.

Waiver of right, in a justice's court, to a postponement for judgment. See note post, § 9614.

§ 9358.

In the absence of testimony, it will be presumed, on appeal that the trial court, in a burglary case, had evidence before it justifying a finding that, if guilty at all, the defendant was guilty of an attempt to commit burglary in the nighttime, which constitutes the first degree of the offense, and that the punishment inflicted was proper. *State v. Mish*, 36 Mont. 168, 175, 122 Am. St. Rep. 343, 92 Pac. 459.

§ 9371.

The provision of a judgment imposing a fine of five hundred dollars, that in default

of payment defendant be imprisoned "for the term of one day for each two dollars of said fine not paid," specifies the extent if imprisonment, and the words "not paid" do not render the judgment indefinite. *State ex rel. Poindexter v. District Court (Mont.)*, 149 Pac. 958.

§ 9373.

Though Revised Codes, section 8388, does not authorize a greater penalty than a fine for a first offense, the court may order that in default of payment of the fine defendant be imprisoned one day for each two dollars of the fine not paid, as this is no part of the penalty but a method of enforcing it. *State ex rel. Poindexter v. District Court (Mont.)*, 149 Pac. 958.

§ 9374.

The method enforcing payment of a fine provided by this section is merely cumu-

lative, and does not prohibit the enforcement of a fine by imprisonment in default of payment. *State ex rel. Poindexter v. District Court (Mont.)*, 149 Pac. 958.

§ 9376.

Referred to in connection with instructions in a robbery case, wherein a prior conviction of burglary in another state

was charged. *State v. Paisley*, 36 Mont. 251, 92 Pac. 566.

Error of the court in assuming the guilt of the accused, in instructions to the jury, is not necessarily ground for reversal, even if the evidence is up for review, and clearly is not in the absence of the evidence from the record. *State v. Gordon*, 35 Mont. 468, 90 Pac. 173.

EXECUTION.

§ 9377.

Proceedings in contempt are in their nature criminal, and the order adjudging one in contempt is in its nature a final judgment, but the sheriff cannot execute a judgment in a criminal matter or proceeding "without competent authority," as provided in section 9773, post; hence, where one has been committed for contempt, and the sheriff does not hold a certified copy of the order of commitment, he is not authorized to detain the person so committed. *Ex parte Mettler*, 50 Mont. 299, 146 Pac. 747.

§ 9379.

An instruction embodying the provisions of this section is not open to the objection that it practically deprives the defendant

of the presumption of innocence which attends him until his guilt is established beyond a reasonable doubt. *State v. Farnham*, 35 Mont. 379, 89 Pac. 728.

Editorial Notes.

Sentence of imprisonment until fine is paid. 12 Am. St. Rep. 202.

An attorney found guilty of contempt was properly subject to punishment by fine and imprisonment until the fine was paid. *State ex rel. Coleman v. District Court (Mont.)*, 149 Pac. 973.

§ 9380.

The certified copy of the judgment is the evidence of the warden's authority for detaining the prisoner. *Stephens v. Conley*, 48 Mont. 352, 367, 138 Pac. 189.

APPEALS.

§ 9397.

Review of intermediate orders. See note post, § 9416.

An appeal does not lie from an order overruling a motion in arrest of judgment. *State v. Brown*, 38 Mont. 309, 311, 99 Pac. 954.

§ 9400.

Referred to in construing section 9406, post. *State v. Foster*, 36 Mont. 280, 92 Pac. 761.

§ 9406.

Referred to in *State v. Foster*, 36 Mont. 280, 92 Pac. 761.

The clerk of the district court must, as soon as notice of appeal is filed, prepare a copy of the record and other papers and transmit the same within ten days from the date of the notice, or, in case there is a bill of exceptions to be settled, then, within ten days of the date of settlement, to the clerk of the supreme court, without charge to the appellant. A praecipe enumerating the papers constituting such technical record need not be lodged with the clerk. *State v. Foster*, 36 Mont. 280, 92 Pac. 761.

The copy of the record which the clerk of the district court is required to prepare upon the filing of a notice of appeal and transmit to the clerk of the supreme court must comply with rule VI, subdivision 2, and rule VII of the latter court. *State v. Foster*, 36 Mont. 278, 92 Pac. 761.

§ 9415.

Construed with reference to mere informality in verdict, where the matter of prior convictions was involved. *State v. Gordon*, 35 Mont. 466, 90 Pac. 173.

The early ruling of the supreme court that "error appearing, prejudice will be presumed," has been abrogated, or at least modified, by this section. *State v. Gordon*, 35 Mont. 466, 90 Pac. 173.

To warrant the supreme court in interfering with the judgment in a criminal case; it must appear that the substantial rights of the defendant have been injuriously affected. *State v. Crean*, 43 Mont. 47, 60, Ann. Cas. 1912C, 424, 114 Pac. 603.

It is for the supreme court to determine whether an error affects the substantial rights of the defendant. If the point can be decided from an inspection of the record, the court may act accordingly; if the defendant claims prejudice, it is his

duty to demonstrate that fact from the record. *State v. Byrd*, 41 Mont. 585, 592, 111 Pac. 407.

Where the record does not show that the jurors were not all present when the verdict was delivered, and from the minutes no other fair inference can be drawn than that they were then actually present, the omission from the minutes of a statement that their names were not called prior to delivery of the verdict is not prejudicial error. *State v. De Lea*, 36 Mont. 536, 93 Pac. 814.

An information charging an attempt to obtain money by false pretenses, though defective in form and containing immaterial averments, is sufficient to sustain a conviction, when it is apparent that the defendant has suffered no prejudice. *State v. Phillips*, 36 Mont. 118, 92 Pac. 299.

Under this section and section 9548, post, a judgment of conviction will not be reversed unless the error prejudiced, or tended to the prejudice of, the defendant. *State v. Vanella*, 40 Mont. 326, 345, 20 Ann. Cas. 398, 106 Pac. 364.

In view of this section and of section 9548, post, improper argument of counsel to the jury is no ground for reversal, where the defendant did not suffer in respect to any substantial right. *State v. Murphy*, 46 Mont. 591, 129 Pac. 1058.

A judgment will not be reversed for error that did not prejudice, or tend to prejudice, the defendant in respect to a substantial right. *State v. Rhys*, 40 Mont. 131, 134, 105 Pac. 494.

A judgment, in a criminal case, will not be reversed for errors not prejudicial. *State v. Jones*, 48 Mont. 505, 515, 139 Pac. 441.

Where, under the evidence in a prosecution for assault in the second degree, the defendant might have been convicted of assault in either the second or third degree, but was found guilty of the lower degree, the judgment will not be reversed

for a technical error in an instruction. *State v. Tracey*, 35 Mont. 555, 90 Pac. 791.

A technical error in pleading a prior conviction in another state will not work a reversal, if the punishment imposed does not exceed the limit which could properly be imposed. *State v. Paisley*, 36 Mont. 248, 92 Pac. 566.

A conviction, otherwise proper, will not be set aside for error which has not prejudiced, or apparently tended to prejudice, the defendant in respect to a substantial right. (Reversal refused for failure to indorse the names of all witnesses on the information.) *State v. McDonald* (Mont.), 149 Pac. 279.

§ 9416.

An order overruling a motion in arrest of judgment is an intermediate order affecting the judgment, and may be reviewed only on appeal from the judgment. *State v. Brown*, 38 Mont. 309, 311, 99 Pac. 954.

§ 9417.

Judgment upon appeal in civil actions. See notes ante, §§ 6253 and 7119.

New trial where case was tried on the wrong theory. See note ante, § 8642.

Reversal, affirmance or modification of judgment in civil cases. See ante, §§ 7118 and 7119.

An unsubstantial variance is no ground for a reversal. *Mosher v. Sutton's New Theater Co.*, 48 Mont. 137, 148, 137 Pac. 534.

A sentence is valid to the extent to which the court has power to impose it. If it contains anything beyond that, it is void only as to the excess. The objectionable part may be stricken out, and, as so modified, the remainder may be allowed to stand. *State v. Stone*, 40 Mont. 88, 93, 105 Pac. 89.

DELINQUENT CHILDREN.

§ 9423. Delinquent Child and Juvenile Delinquent Defined.

(Section 1.) For the purpose of this act, the words "delinquent child" and the words, "juvenile delinquent person" shall respectively mean and include any child seventeen (17) years of age, or under such age, who violates any law of this state or any city ordinance of any city or town in this state; or who is incorrigible; or who knowingly associates with a thief or with a vicious or immoral person; or who knowingly visits or lives in a house of prostitution, or in a house of ill fame; or who is growing up in idleness or crime; or who knowingly patronizes or visits any place, house, apartment or building where any gambling device is, or devices are, or shall be run or operated or used, or are kept for such purposes, or where any gambling is done or conducted; or who patronizes or habitually visits any saloon or saloons, dram-shop, or dram-shops, or

who purchases at any saloon or dram-shop any wines, beverages or intoxicating liquors for itself; or who patronizes or visits any poolroom which is run in connection with a saloon, or where liquor is sold, or rooms where pools are sold at any time; or visits or patronizes any bucket-shop or shops; or who wanders about the streets of any town or city in the nighttime, without being on any lawful business or occupation; or who habitually wanders about or visits any railroad yards, or tracks, or hooks or jumps on to any moving train or trains; or who enters any car or cars, engine or engines without a lawful authority; or who habitually uses vile, obscene, vulgar, profane or indecent language; or who is guilty of immoral conduct in any public place or about any schoolhouse or school grounds; or who shall become addicted to the use of spirituous or intoxicating liquors as a beverage, and not for medical purposes prescribed by a physician; or who shall have become addicted to the use of drugs other than prescribed by a physician, or who shall become addicted to the use of cigarettes. [Amendment approved March 7, 1911; Laws 1911, p. 320.]

§ 9424. Who are Deemed Delinquent Children.

(Section 2.) Any child of the age of seventeen (17) years, or under such age, who shall commit any of the acts or do any of the things mentioned in the above section shall be deemed a delinquent child, or a juvenile delinquent person, and shall be proceeded against as such in the manner hereinafter provided. A disposition of any child under this act, or any evidence given in such case, shall not in any civil or criminal or other cause or procedure whatever in any court, be lawful or proper evidence against such child for any purpose whatever excepting in any subsequent case against the same child prosecuted under this act. The word "child" or "children" may mean one or more children, and the word "parent" or "parents" may mean one or more parents, when consistent with the intent of this act. [Amendment approved March 7, 1911; Laws 1911, p. 321.]

§ 9425. Jurisdiction of District Court—Probation Officer and His Report.

(Section 3.) The district courts of the several counties in this state shall have jurisdiction in all cases coming within the terms and provisions of this act. In trials under this act the child complained against or any person interested in such child, shall have the right to demand a trial by jury, which shall be granted as in other cases, unless waived, or the judge of his own motion may call a jury to try such case. A special record book or books shall be kept by the chief probation officer of the court, who shall be also the clerk in attendance at all hearings under this act, to be known as "The Juvenile Delinquent Record," and the docket or calendar of the court upon which there shall appear the case or cases, under the provisions of this act shall be known as "The Juvenile Docket." Between the first and thirteenth day of March, of each year, the chief probation officer shall prepare a written report of the cases had in this department, showing the number and disposition of delinquent children brought before such court, together with such other and useful information regarding such cases, and the parentage of such children, as may be reasonably obtained at the hearings thereof; provided, that the name and identity of any such child or parent shall not be disclosed in such report. [Amendment approved March 7, 1911; Laws 1911, p. 321.]

§ 9426. Proceedings to be by Petition.

(Section 4.) All proceedings under this act shall be by petition duly sworn to and filed with the clerk of the district court. In any such petition filed under this act, the act or acts claimed to have been committed by the child proceeded against shall, in a general way, be stated therein as constituting a juvenile delinquent child, or person. [Amendment approved March 7, 1911; Laws 1911, p. 322.]

§ 9427. Who may File Petition and What to State Therein—Citation—Incarceration and Custody of Child.

(Section 5.) Any reputable person being a resident of the county may file with the clerk of the court having jurisdiction of the matter a petition in writing, setting forth that a certain child, naming it, within his county, not now or hereafter an inmate of a state institution incorporated under the laws of this state, is a delinquent person as defined in section 1 hereof; and that it is for the best interests of the child and this state that the child be taken from its parent, parents, custodian or guardian, and placed under the care of some suitable person to be appointed by the court or committed to some institution or society that has for its objects the care of delinquent children; and that the parent or parents, custodian or guardian of said child are unfit or improper guardians, or are unwilling or unable to care for, protect, train, educate, control or discipline such child or that the parent, parents, guardian or custodian consent that such child be taken from them. The petitioner shall set forth either the name or that the name is unknown to the petitioner (a) of the person having the custody of such child; and (b) of each of the parents, or the surviving parent of a legitimate child, or of the mother of an illegitimate child, or (c) if it allege that both of said parents, or such mother is dead, then of the guardian, if any, of such child; (d) if it alleges that both parents are, or that such mother is dead, and that no such guardian of such child is known to petitioner, then of a near relative, or that none such is known to petitioner. The petition shall also state the residence of such parties, as far as the same are known to such petitioner. All persons named in such petition shall be made defendants by name and shall be notified of such proceedings in the same manner as is or may hereafter be required in civil proceedings by the laws of this state. Upon the filing of any petition under this act a citation shall be issued by the clerk of the court, under the direction of the judge having jurisdiction, ordering and directing the person alleged to have the custody of such child to appear with the child at the time and place stated in the citation and show cause before said court, and shall also require all defendants to be and appear and answer the petition on the return day of the citation. The citation shall be made returnable at any time within twenty days after the date thereof and may be served by the sheriff or by any duly appointed probation officer, even though such officer be the petitioner. The return of such citation with indorsement of services by the sheriff or such probation officer in accordance herewith shall be sufficient proof thereof, but no incarceration of the child proceeded against thereunder shall be made or had, unless, in the opinion of the judge of the district court, or, in the absence of the judge from the county seat, then in the opinion of the justice of the peace or committing and examining magistrate, it shall be necessary to insure its attendance in

court at such time as shall be required. In order to avoid such incarceration if practical, it shall be the duty of the judge having jurisdiction to serve a notice of the proceedings upon the parent of the child, if living and known, or its legal guardian, or, if his or her whereabouts or residence is not known or if neither parent nor guardian shall be in this state, then some relative living in the county, if any there be whose whereabouts is known, and such judge having jurisdiction may accept the written or verbal promise of such person so notified, except in felony cases, or of any other proper person, to be responsible for the presence of such child at the hearing of such case, or at any other time to which the case may be continued or adjourned by the court. In case such child shall fail to appear at such time or times as the court may require the person or persons responsible for its appearance as herein provided for, unless, in the opinion of the court there shall be a reasonable cause for such failure of such child to appear as herein provided for may be proceeded against as in cases for contempt of court and punished accordingly; and where any such child shall have failed to appear, as required by the court or its officers, any warrant, *capias* or alias, issued in such case, may be executed as in other cases; provided, however, that no child within the provisions of this act under seventeen (17) years of age shall, under any circumstances, be incarcerated in any common jail or lock-up and any officer or person violating this provision of this act shall be guilty of a misdemeanor, and, on conviction, fined in a sum not to exceed one hundred (\$100) dollars. [Amendment approved March 7, 1911; Laws 1911, p. 322.]

§ 9428. Preliminary Examination of Child.

When any child seventeen (17) years of age, or under, is taken into custody, such child shall be taken directly before the district court, or, if the district court is not then in session in said county, it may be taken before a justice of the peace or a police magistrate, who shall at once notify the chief probation officer of the county, who shall make investigation of such case as in the other cases where complaint has been made or petition duly filed and after investigation, as herein provided, by the said chief probation officer, then the justice of the peace or police magistrate shall act as a committing and examining magistrate only, and it shall be his duty to proceed with the hearing thereof, after granting to the child or such person as may be representing it, reasonable opportunity to obtain counsel, if counsel be desired by the accused, and as soon as the defendant can procure its witnesses. In case the examining magistrate hold the child for trial to the district court, it shall be the duty of the magistrate to transfer the case to said district court, and the probation officer having the child in charge to take the child before the court, and the district court may proceed to hear and dispose of the case in the same manner as if said child had been brought before the court upon petition originally filed as hereinbefore provided; or, when necessary, when the delinquency charged would otherwise constitute a felony, may direct such child to be kept in proper custody until investigation, and an information may be filed as in other cases of felony or misdemeanor under the laws of the state; provided, that nothing herein shall be construed to confer jurisdiction upon any justice of the peace or police court to try any case against any child seventeen (17) years of age, or under. In

any case the court shall require notice to be given and investigation to be made as in other cases under this act, and may adjourn the hearing from time to time for that purpose. [Amendment approved March 7, 1911; Laws 1911, p. 324.]

§ 9429. Place of Trial.

The place of trial of any person complained of or informed against for the violation of any of the provisions of this act shall be in the county in which any child shall have been a delinquent child, unless a change of venue of the person complained of or informed against for the violation of said section No. 6 is had, as provided by law for a change of venue in criminal cases. [Amendment approved March 7, 1911; Laws 1911, p. 325.]

§ 9430. Conduct of Trial.

All trials of such children as are affected by this act shall be held in chambers or in a room provided for such purposes. The judge of such court shall designate a certain time for the trial of such cases, and is hereby empowered to exclude from the room at such trials any and all persons that do not represent the interest of the child or those not necessary for the trial of the case. The probation officer shall be present at every trial in the interest of the child on trial. Agents of child saving institutions and societies, and persons actively engaged in child saving work shall be permitted to be present at the hearing of all children's cases. [Amendment approved March 7, 1911; Laws 1911, p. 325.]

§ 9431. Duty of County Attorney.

It shall be the duty of the county attorney, on request of the judges exercising jurisdiction provided for in this act to prosecute all persons charged with violating any of the provisions of this act. [Amendment approved March 7, 1911; Laws 1911, p. 325.]

§ 9432. Appeals.

The provisions of law relating to appeals,—allowance and signing bills of exceptions shall apply to persons over seventeen (17) years of age under this act, and from the judgment of the court or judge under this act, appeals may be prosecuted as in other criminal cases. [Amendment approved March 7, 1911; Laws 1911, p. 325.]

§ 9433. Suspension of Sentence.

In every case of conviction under this act [§§ 9423-9439; herein] and where imprisonment is imposed as part of the punishment, the judge may suspend such sentence upon such terms as he may impose. [Amendment approved March 7, 1911; Laws 1911, p. 326.]

§ 9434. Presiding Judge.

In districts where there are more than one judge, one of the judges shall be designated to act as the judge who shall hear all proceedings under this act; provided, that in districts where judges are required to travel from one county to another, either one of the judges may act. [Amendment approved March 7, 1911; Laws 1911, p. 326.]

§ 9435. Juvenile Improvement Committee.

(Section 13.) In every county in the state the judge having jurisdiction shall appoint a committee, willing to act without compensation, or

composed of seven reputable citizens of both sexes, which committee shall be designated as a juvenile improvement committee; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the juvenile department of the court, and shall act as supervisory committee of such detention home. [Amendment approved March 7, 1911; Laws 1911, p. 326.]

§ 9436. Probation Officers—Salary and Expenses—Complaints Against Minors and Procedure Thereon—Trial and Punishment.

(Section 14.) In every judicial district of the state of Montana, the judge or judges thereof may appoint one discreet person of good moral character, who shall be known as the chief probation officer of such district, and who shall hold his office during the pleasure of the court, and who shall receive for his or her services such sum as shall be specified by the court upon appointment, not exceeding the sum of eighteen hundred dollars (\$1,800) per annum, to be paid, however, upon a per diem basis for the time actually and necessarily employed in performing the duties of the office. Said probation officer shall also be reimbursed for the actual and reasonable traveling and other expenses incurred by him in pursuance of his official duties. Such reimbursement shall be made once each month by the county or several counties constituting the judicial district for which such probation officer shall have been appointed. Each probation officer shall, not later than the tenth (10th) day of every calendar month, and before the allowance and payment thereof, file or cause to be filed with the proper board of county commissioners of the county chargeable therewith, an itemized sworn statement and account of such expenses, including his claim for salary for the preceding month, with the approval of the district judge or judges indorsed thereon. Each county of the state shall reimburse such probation officer only in respect to such expenses as have been incurred in connection with juvenile persons residing in that county. When a judicial district consists of one county, the salary of the probation officer to be paid by that county, and when a judicial district is composed of more than one county, the salary of such officer shall be apportioned among and paid by each of said counties in proportion to the assessed valuation of such counties for the year then current.

That in every judicial district of the state of Montana the judge or judges thereof having jurisdiction, if in their opinion the circumstances require, may appoint other persons, but not to exceed two (2) to serve as probation officers, who shall receive not to exceed one hundred dollars (\$100) per month, and to serve at the will of the court, and be paid by the county treasurer, as above set forth, and provided that said judge or judges of the district court may appoint as probation officers such other discreet persons of good moral character as are willing to serve without compensation. It shall be the duty of the clerk of the district court, immediately upon the appointment of a probation officer, to notify the courts and magistrates of any county in which the said officer is appointed, giving them the names and postoffice addresses of such officers. The duties of said probation officer or officers shall be such as hereinafter prescribed.

Whenever a complaint is made or pending against a boy or girl, before they have completed their seventeenth year (17th), for the commission of any offense not punishable by law with life imprisonment, or for which the penalty is death, before any court or magistrate, it shall be the duty

of such court or magistrate at once and before any other proceedings are had in the cause, to give notice in writing of the pendency of said cause to the probation officer of his county. Said probation officer shall immediately, or as soon thereafter as possible, proceed to inquire into and make a full examination and investigation of the facts and circumstances surrounding the commission of the alleged offense, the parentage and surroundings of said child, its exact age, habits and school record, and everything that will throw light on its life and character, and may also inquire into the home conditions, habits and character of the parents or guardians, and shall make a full report thereon in writing to the judge of the district court having charge of such cases, before said cause is tried. If, upon consultation with the probation officer and examination of such report, it shall appear to the judge of said court that the child is not guilty of the offense charged against it, or that the interest of the child shall be best subserved thereby, the court shall order that such be not brought into court and said cause shall be dismissed. Said chief probation officer shall attend all hearings under this act and represent the interests of the child and shall take charge of any child before or after the trial, as the judges may direct; he shall serve warrants and other process of the court, within or without the county, and in that respect they are hereby clothed with the powers and authority of sheriffs; they can make arrests without warrant upon view of the violation of any of the provisions of this act and detain the person so arrested pending the issuance of a warrant, and perform such other duties incident to their offices as the judge may direct, and all sheriffs, deputy sheriffs, constables, marshals and police officers are required to render assistance to probation officers in the performance of their duties when requested to do so.

If upon the trial of any child the court shall find that such child is guilty of the offense charged, he may withhold judgment for a definite or indefinite period if it appear that the public and the interest of the child will be best subserved thereby, and may order that such child be returned to the care of his or her parents, guardian or friends; or he may commit such child to the care of a volunteer probation officer who shall exercise supervision over it until such time as it is discharged by the court from supervision upon the recommendation of such volunteer probation officer, and if the parents, parent, guardian or custodian consent thereto, or if the court shall further find either that the parent, parents, guardian or custodian are unfit or improper guardians, or are unable or unwilling to care for, protect, educate or discipline such child, and shall further find that it is for the best interest of such child and for the people of this state that such child be taken from the custody of its parents, custodian or guardian, the court may order such child to be placed in the family of some suitable person where such family home shall be recommended by the probation officer of the court after consultation with those representing the interests of the child, there to remain until he or she shall have attained the age of twenty-one years or for any less time, or the court may order such child to be placed in the home where the county's dependent children are kept; or, if it appears to be for the best interests of the child, and such child appears to be in need of institutional training, the court may order him or her to be committed to some state institution, or some institution of learning managed by a corporation or an individual, and devoted to the care of such children, for a definite or indefinite period; said institution to be situ-

ated in the state of Montana, and to be inspected at least once a year and approved by the Bureau of Child and Animal Protection, and to receive for its services a per diem of thirty-five cents for each day that such child shall be in the custody, such per diem to be paid by the county sending the child, upon itemized vouchers duly certified to by the court; or the court may impose a fine with costs, or the court may for good cause shown suspend judgment in any case for a definite or indefinite period; or, if the offense be a malicious trespass, the court may require the damage to be made good, or if the offense be petit larceny and the stolen property is not recovered, the court may require it to be paid for by the delinquent child himself if it be shown that he or she is capable of earning the money or has money of his or her own, or its parents or guardian, at the discretion of the court; and in all the foregoing cases, where the parents or guardian are unfit to have the custody of said child or unable to control said child, the court may deem the child to be the ward of the court, as far as its person is concerned; and in all cases where any child has been decreed to be the ward of the court, the authority of the court over its person shall continue until the court shall otherwise decree, and the court may adopt all rules and regulations that may be needed in order to carry out the provisions of this act. In every case in which the court shall commit any child to the care and custody of any other institution as above provided, other than a state institution and such child shall have a parent or guardian within the county, the court may make and enter an order requiring such parent or guardian to appear before said court upon a day and hour to be named by the court therein, and show cause, if any she or he have, why she or he should not pay for the support of such child, in whole or in part, while it is an inmate of such institution. A certified copy of said order shall be served upon such parent or guardian by the chief probation officer of the county not less than ten days prior to the day fixed therein for such appearance. Upon due service and return of said order, the court shall, upon the day fixed or upon such subsequent day as may be fixed by the court, hear evidence as to the financial ability of such parent or guardian, and in case the court shall find that such parent or guardian should pay for or contribute to the support and maintenance of such child, the court shall render judgment against such parent or guardian that that parent or guardian shall pay to the chief probation officer such sums as the court shall adjudge and at such time and in such amounts as shall be by the court found just. And such judgment shall be enforced as other judgments are enforced, and all moneys collected on such judgments shall be held by the chief probation officer and shall be remitted quarterly by him to the institution keeping such child or children, and the amount so remitted shall be deducted from the quarterly bill of such institution.

Provided, that the chief probation officer shall make a verified report to the court at the close of each quarter of the amount of money so collected on such judgments, which report the judge shall cause to be filed with the county commissioners with the bill rendered by the institution keeping such child. If any child is wayward and unmanageable, the court may commit him or her to the industrial school, or to any other state penal or reformatory institution authorized by law to receive such boy or girl, subject to such conditions as are already provided by law for the reception of such children in said schools or institutions. And in cases where a child shall be committed to a state or other institution as above provided, the report

of the probation officer shall be attached to the commitment and the child shall be placed in charge of the probation officer, or some person designated by the court to be conveyed under his direction, to the designated institution; provided, that a woman shall always be sent with the girls so committed, and the person taking such child to the designated institution shall be allowed and paid his or her actual expenses and no more, where he or she is a paid officer of such court, appointed by the court, and in all other cases the person taking such child to any institution shall be allowed and paid for his or her services, the same fees and expenses as are paid to sheriffs in like cases;

And provided, that the court may when the health or condition of the child require it, cause the child to be placed in a public hospital or institution for treatment or special care, or in a private hospital or institution which will receive it for like purposes without charge or for the per diem of thirty-five cents a day;

Provided, that when any child contemplated by this act shall be sentenced to confinement in any institution to which adult convicts are sentenced, it shall be unlawful to confine such child in any room, yard or inclosure with such adult convicts, or to allow them in any manner to come in contact with them or in any way commingle with such adult convicts, or to bring such child into any yard or room in which adult convicts may be present;

And provided, that in every trial of any such child he shall be entitled to a trial by a jury of twelve persons if he shall so elect, and

Provided, that if any such boy or girl against whom a petition is filed is unable to give bond, and the court does not release him or her on his or her own recognizance, then said boy or girl shall be entitled to an immediate hearing and trial, according to law.

Providing that the commitment of any child to an institution or association or society shall be subject to the rules and laws that may be in force from time to time governing such institution, association or society.

Provided, that when it shall be made to appear to the court that the home of the child or of his parents, former guardian or custodian, is a suitable place for such child, and that such child could be permitted to remain or ordered to be returned to said home, consistent with the public good and the good of such child, the court may enter an order to that effect, returning such child to his home under probation parole or otherwise; it being the intention of this act that no child should be taken away or kept out of his home or away from his parents or guardian any longer than is reasonably necessary to preserve the welfare of the child and the interest of this state; provided, however, that no such order shall be entered without first giving ten days' notice to the person, institution or association to whose care such child has been committed, unless such guardian, institution, or association to whose care such child has been committed, consents to such order.

And provided, the court may from time to time, cite into court the person, institution, association or society, to whose care any delinquent child has been awarded, and require him or it to make a full, true and perfect report as to his or its doings in behalf of such child; and it shall be the duty of such person, institution or association, within ten days after such citation, to make such report, either in writing, verified by affidavit, or verbally under oath, in open court or otherwise, as the court shall direct;

and upon the hearing of such report with or without further evidence, the court may, if it sees fit, take such child from said person, institution, association or society, and place it with another, or restore such child to the custody of its parents or former guardian or custodian. [Amendment presented to Governor February 23, 1915, and became a law without his approval; Laws 1915, p. 74.]

§ 9437. Returns and Records.

(Section 15.) Each person released upon probation, as aforesaid, shall be furnished by the court with a written statement of the terms and conditions of his release. Each probation officer shall keep full records of all cases placed in his care by the court, and of any other duties performed by him under this act. [Amendment approved March 7, 1911; Laws 1911, p. 332.]

§ 9438. Placing Children With Persons With Like Religious Belief.

(Section 16.) The court, in committing children, shall place them, as far as practicable, in the care and custody of some individual holding the same religious belief as the parents of said child, or with some association which is controlled by persons of like religious faith of the parents of said child. [Amendment approved March 7, 1911; Laws 1911, p. 332.]

§ 9439. Contract by Parents or Guardians for Keeping Children.

(Section 17.) It shall be lawful for the parents, parent or guardian or other person having the right to dispose of dependent or neglected child to enter into an agreement with any association or institution incorporated under any public or private law of this state, for the purpose of aiding, caring for or placing in homes such children, and being approved as herein provided, for the surrender of such child to such association or institution, to be taken and cared for by such association or institution, or put into a family home. Such agreement may contain any and all proper stipulations to that end, and may authorize the institution or association, by its attorney or agent, to appear in any proceeding for the legal adoption of such child, and consent to its adoption, and the order of the court made upon such consent shall be binding upon the child and its parents or guardian or other person the same as if such person were personally present in court and consented thereto, whether made a party to the proceeding or not. [Amendment approved March 7, 1911; Laws 1911, p. 333.]

§ 9439a. Encouragement of Delinquency a Misdemeanor.

(Section 18.) Any parent or parents, legal guardian or other persons who shall encourage, willfully cause or contribute to, or through negligence in the care, custody, guidance, education, maintenance or direction of any child of the age of seventeen (17) years, or under such age, cause or permit such child to violate any law of this state, or the ordinance or ordinances of any city of this state, or to be or become incorrigible, or to knowingly associate with thieves, vicious or immoral persons; or to grow up in idleness or crime, or to knowingly enter a house of prostitution; or to knowingly visit or patronize any place, house or apartment building where any gambling device is or devices are, or shall be operated or run, or where any gambling is done or conducted or to patronize or visit any saloon or saloons, or dram-shop or dram-shops, where intoxicating liquors are sold, or to patronize or visit any public poolroom or poolrooms, or bucket-shop, or to

wander about the streets of any town or city in the night-time, without being on lawful business or occupation, or to habitually wander about or visit any railroad-yards or tracks, or to jump or hook on to any moving train, or to enter any car or engines, without lawful authority; to habitually use any vile, obscene, vulgar, profane, or indecent language, or to be guilty of immoral conduct in any public place, or about any schoolhouse or grounds, or keep, or permit it in or about any saloon or place where spirituous liquors, or intoxicating liquors are sold or handled or in any gambling-house or place where gambling is practiced, or in a house of ill fame or prostitution; or to become addicted to the use of spirituous and intoxicating liquors not for medical purposes prescribed by a physician, shall be guilty of a misdemeanor, and upon trial and conviction thereof shall be fined in a sum not less than ten dollars (\$10), and not to exceed one thousand dollars (\$1,000) or imprisonment in the county jail for a period not exceeding nine (9) months, or by both such fine and imprisonment. [Amendment approved March 7, 1911; Laws 1911, p. 333.]

§ 9439b. Suspension of Sentence.

(Section 19.) The court may suspend any sentence for the violation of the provisions of section 18 of this act, or release any person sentenced under this act from custody upon condition that such person shall furnish a good and sufficient bond or undertaking to the state of Montana, in such penal sum, not exceeding three thousand (\$3,000) dollars, as the court shall determine, upon conditions to be prescribed or imposed by the court as seem most calculated to remove the cause of such delinquency of the child or children, and while such conditions are accepted and complied with by such persons, such sentence may, in the discretion of the court, remain suspended, and such persons shall be considered on probation in said court; and in case a bond is given as provided herein the conditions prescribed by the court may be made a part of the terms and conditions of such bond. [Amendment approved March 7, 1911; Laws 1911, p. 334.]

§ 9439c. Forfeiture of Bond and Execution of Sentence.

(Section 20.) Upon the failure of any person to comply with the terms and conditions of such bond, or of the conditions imposed by the court, such bond or the term of probations may be declared forfeited and terminated by the court, and the original sentence executed as though it had never been suspended, and the terms of any jail sentence imposed in any such case shall commence from the date of the incarceration of any such person after the forfeiture of such bond or term of probation. There shall be deducted from any such period of incarceration any part of such sentence which may have already been served. [Amendment approved March 7, 1911; Laws 1911, p. 334.]

§ 9439d. Enforcement of Bond.

(Section 21.) It shall not be necessary to bring a separate suit to recover the penalty of any such bond forfeited, but the court may cause a citation to issue to the surety or sureties thereon, requiring that he or she appear at a time named therein by the court, which time shall not be less than ten or more than twenty days from the issuance thereof, and show cause, if any there be, why judgment should not be entered for the penalty of such bond and execution issue for the amount thereof against the property of the surety or sureties thereon, as in civil cases, and, upon failure

to appear or failure to show any sufficient cause, the court shall enter judgment in behalf of the state of Montana, against the surety or sureties. Any moneys collected or paid upon any such execution or in any case upon said bond, shall be turned over to the county treasurer of the county in which such bond is given, to be applied to the care and maintenance of the child or children for whose dependency such conviction was had in such manner and upon such terms as the district court may direct.

Provided, that if it shall not be necessary in the opinion of the court to use such fund or any part thereof for the support and maintenance of such child, the same shall be paid into the county treasury and become a part of the funds of such county. [Amendment approved March 7, 1911; Laws 1911, p. 335.]

§ 9439e. Funds for Carrying Out Act—Detention Home.

(Section 22.) The county commissioners of all counties to which this act applies are hereby authorized, empowered and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this act; and in counties with a population of over forty thousand (40,000) inhabitants, the county commissioners shall provide by purchase, lease or otherwise, a place to be known as a detention home, within convenient distance of the courthouse, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent, or neglected children may be detained, until final disposition, which place shall be maintained by the county as in other like cases.

And in counties having a population in excess of forty thousand (40,000) the judge having jurisdiction may appoint a superintendent and matron subject to ratification of the juvenile improvement committee who shall have charge of such home and of the delinquent, dependent and neglected minors detained therein.

Such superintendent and matron shall be suitable and discreet persons, qualified as teachers of children. Such home shall be furnished in a comfortable manner, as nearly as may be as a family home. The compensation of such superintendent and matron shall be fixed by the county commissioners, such compensation and the maintaining of such home shall be paid out of the county treasury upon a warrant of the county auditor, which shall be issued upon the itemized vouchers sworn to by the superintendent and certified by the judge.

When such detention home is provided for by the county commissioners, the said commissioners shall enter an order on their journal, transferring to the proper fund from any other fund or funds of the county, in their discretion such sums as may be necessary to purchase or lease said home and properly furnish and conduct the same and pay the compensation of the superintendent and matron. Said commissioners shall likewise upon the appointment of probation officers as provided in this act, transfer to the proper fund from any other fund or funds of the county, in their discretion, such as may be necessary to pay such probation officers as provided for herein, such transfer to be made on the authority of this act alone.

At the next tax levying period, provisions shall be made for the expenses of the court as herein provided. [Amendment approved March 7, 1911; Laws 1911, p. 335.]

§ 9439f. Repeal of Existing Laws.

(Section 23.) Nothing in this act shall be construed to repeal any portion of sections 8345, 8346, 8347, 8348, 8349, and 8350 of the Revised

Codes of Montana, 1907, or any amendments thereof, nor shall anything in this act be construed to repeal any existing law providing for the support, maintenance, guidance, education, or protection by parents of their minor children, and nothing in said laws shall prevent proceedings under this act in any proper case. [Amendment approved March 7, 1911; Laws 1911, p. 336.]

§ 9439g. Construction of Act—Treatment of Children—Costs of Transportation.

(Section 24.) This act shall be liberally construed, to the end that its purpose may be carried out, to wit: That the care, custody, education and discipline of the child shall approximate as nearly as may be that which should be given it by its parents, and that, as far as practicable any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.

And as far as practicable, in proper cases, that the parent or parents or guardians of such child may be compelled to perform their moral and legal duty in the interest of the child and all fees and costs in all cases coming within the provisions of this act, together with such sums as shall be necessary for the incidental expenses of such court and its officers and together with the costs of transportation of children to places to which they may be committed, shall be paid out of the county treasury of the county, upon itemized vouchers, certified to by the judge of the court. [Amendment approved March 7, 1911; Laws 1911, p. 337.]

§ 9439h. Industrial School and Bureau of Child Protection.

(Section 25.) Nothing in this act shall be construed to repeal any portion of the acts relating to the industrial schools or the act or acts relating to the Bureau of Child and Animal Protection. [Amendment approved March 7, 1911; Laws 1911, p. 337.]

§ 9439i. Bond of Probation Officer.

(Section 26.) In counties of over forty thousand (40,000) inhabitants the chief probation officer shall be required to furnish to the state of Montana, a bond in the sum of five thousand (\$5,000) dollars, for the faithful performance of his duties; in counties with less than forty thousand (40,000) inhabitants the chief probation officer shall furnish to the state of Montana a bond in the sum of two thousand dollars (\$2,000) for the faithful performance of his duties. [Amendment approved March 7, 1911; Laws 1911, p. 337.]

§ 9439j. Repealing Clause.

(Section 27.) Sections 9423, 9424, 9425, 9426, 9427, 9428, 9429, 9430, 9431, 9432, 9433, 9434, 9435, 9436, 9437, 9438, and 9439, of the Revised Codes of Montana, 1907, are hereby repealed. [Amendment approved March 7, 1911; Laws 1911, p. 337.]

ERRING FEMALES.

§ 9439k. Reformation of Erring Women and Girls.

(Section 1.) Any female person may at any time apply to the Secretary of the Bureau of Child and Animal Protection to be admitted to any institution in this state devoted to the purpose of reclaiming or reforming unchaste women, or such as are likely to become so, whereupon such secre-

tary may, in his discretion, make an order directing that such person be committed to such institution for such period as in his judgment may be necessary.

(Section 2.) Whenever under any law of this state any court, judge or magistrate is authorized to commit any person brought before him to the reform school, he may, if such person be a female, order instead, that such person be committed to and confined in some institution such as is designated in section 1 of this act and there kept in custody for such period, during the minority of such person, as he may direct, and thereupon such proceedings shall be taken as are provided by law in case of commitments to the reform school.

(Section 3.) Whenever any female person is convicted before any court or magistrate of drunkenness, disorderly conduct or vagrancy she may, at the discretion of the court or the judge thereof, in lieu of the punishment prescribed by the law or ordinance under which such conviction was had, be committed to some institution such as is mentioned in section 1 of this act for not more than one year.

(Section 4.) Any institution may qualify itself for the reception of inmates, under the provisions of this act, by filing in the office of the Secretary of State a statement to the effect that it is an institution of the character mentioned in section 1 of this act, and setting out the number of inmates it can accommodate, which said statement shall be verified by the acting head of such institution.

(Section 5.) The person, corporation or association conducting any such institutions shall be entitled to compensation from the county from which any inmate is sent or admitted, as provided in this act, at the rate of ten dollars per month, to be allowed and paid as other claims against the county are paid.

(Section 6.) Each such institution shall annually on or before the first day of January in each year, make a report to the Governor showing the number of inmates in such institution, the number admitted under the provisions of this act, and the total amount paid to it by virtue of it. [Approved March 9, 1909; Laws 1909, c. 131, p. 189.]

BAIL.

§ 9443.

No discharge for irregularity in justice's judgment. See note post, § 9621.

§ 9447.

An order allowing bail, in a homicide

case, is properly made, in the absence of a showing, by the county attorney, that the proof of the defendant's guilt was evident or the presumption thereof great. State v. District Court, 35 Mont. 507, 90 Pac. 513.

WITNESSES.

§ 9483. When Husband and Wife are not Competent Witnesses.

Except with the consent of both, or in cases of criminal violence upon one by the other, or in case of abandonment, or neglect of children by either party, or of abandonment or neglect of the wife by the husband, neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties. [Amendment approved March 8, 1915; Laws 1915, p. 248.]

§ 9484.

This section has made an exception to the general rule that a court should not single out a particular witness and direct the attention of the jury to his testimony. *State v. De Lea*, 36 Mont. 541, 93 Pac. 814.

When a defendant is sworn and testifies in his own behalf, he is subject to the same rules of cross-examination and impeachment as any other witness. No wider latitude is permitted. *State v. Crowe*, 39 Mont. 174, 178, 18 Ann. Cas. 643, 102 Pac. 579.

Editorial Notes.

Privilege of witness as to incriminating testimony. 21 Am. Dec. 55; 75 Am. Rep. 318.

Privilege of witnesses, waiver of by voluntarily testifying in their own behalf. 19 Am. Rep. 348.

Demand of accused in presence of jury to produce incriminating evidence as violation of constitutional privilege. Ann. Cas. 1912D, 261.

Right of counsel to comment on failure of accused to call his wife as witness. Ann. Cas. 1913D, 559.

§ 9494.

There is no limitation, either in this section or in section 9495, post, as to the

time when depositions may be taken, and it is at least implied that they may be taken at any time after the defendant has been held to answer the charge, even before an information has been filed against him. *State v. Vanella*, 40 Mont. 326, 337, 20 Ann. Cas. 398, 106 Pac. 364.

§ 9495.

Time of taking. See note ante, § 9494.

§ 9500.

The law does not require that a deposition shall show affirmatively that the defendant was present at the taking. The officer's duty is limited to taking and certifying the deposition. *State v. Vanella*, 40 Mont. 326, 337, 20 Ann. Cas. 398, 106 Pac. 364.

§ 9504.

In the absence of any objection to the use of a deposition, it is not necessary for it to appear whether or not it was taken as the law requires. The court will not presume that error was committed. *State v. Vanella*, 40 Mont. 326, 332, 20 Ann. Cas. 398, 106 Pac. 364.

HARMLESS ERROR.**§ 9548.**

Reversal for errors not prejudicial. See note ante, § 9415.

Construed with reference to mere informality in verdict, where the matter of prior convictions was involved. *State v. Gordon*, 35 Mont. 466, 90 Pac. 173.

The early ruling of the supreme court that "error appearing, prejudice will be presumed," has been abrogated, or at least modified, by this section. *State v. Gordon*, 35 Mont. 466, 90 Pac. 173.

An information charging an attempt to obtain money by false pretenses, though defective in form and containing immaterial averments, is sufficient to sustain a conviction, when it is apparent that the defendant has suffered no prejudice. *State v. Phillips*, 36 Mont. 118, 92 Pac. 299.

Where, under the evidence in a prosecution for assault in the second degree,

the defendant might have been convicted of assault in either the second or third degree, but was found guilty of the lower degree, the judgment will not be reversed for a technical error in an instruction. *State v. Tracey*, 35 Mont. 555, 90 Pac. 791.

Where the record does not show that the jurors were not all present when the verdict was delivered, and from the minutes no other fair inference can be drawn than that they were then actually present, the omission from the minutes of a statement that their names were not called prior to delivery of the verdict is not prejudicial error. *State v. De Lea*, 36 Mont. 536, 93 Pac. 814.

A technical error in pleading a prior conviction in another state will not work a reversal if the punishment imposed does not exceed the proper limit. *State v. Paisley*, 36 Mont. 248, 92 Pac. 566.

PARDONS.**§ 9556.**

The governor is authorized to impose conditions upon granting a pardon, or to attach restrictions to a parole granted.

He is authorized to impose conditions without restriction so long as they are not illegal, immoral or impossible of performance. *In re Sutton*, 50 Mont. 80; 145 Pac. 2.

Editorial Notes.

Definition and effect of pardons. 59 Am. Dec. 572.

Conditional pardons. 111 Am. St. Rep.

108; 7 Ann. Cas. 92; 13 Ann. Cas. 1103.

Power of governor to pardon as confined to offenses against state. Ann. Cas. 1914A, 484.

POLICE AND JUSTICES' COURTS.

§ 9584.

Instance of a complaint charging a sale of liquor, in violation of the local option law, and meeting all the requirements of the statute. *State v. O'Brien*, 35 Mont. 482, 494, 10 Ann. Cas. 1006, 90 Pac. 514.

§ 9585.

It is the duty of a justice of the peace, when he is satisfied upon the complaint of any citizen that an offense has been committed, to issue a warrant of arrest and to have the offender brought before him for trial or examination, as the case may be. *State v. O'Brien*, 35 Mont. 482, 494, 10 Ann. Cas. 1006, 90 Pac. 514.

§ 9586.

The rule of practice, in case of an appeal to the district court, where the judge has failed to make his docket entries as required by this statute, is discussed in the case of *In re Graye*, 36 Mont. 397, 93 Pac. 66.

§ 9589.

It seems that a police judge may grant a change of venue either for bias or prejudice of the judge or prejudice in the citizens of the township. *In re Graye*, 36 Mont. 397, 93 Pac. 66.

A change of venue cannot be had from a justice's court in one county to such a court in another county. *State v. Cronin*, 41 Mont. 293, 295, 109 Pac. 144.

A board of county commissioners cannot nullify the provisions of this section by reducing the number of townships in a county to one. *State v. Cronin*, 41 Mont. 293, 109 Pac. 144.

§ 9614.

Where a person accused in a justice's court of a misdemeanor is convicted and the justice immediately proceeds, upon the return of the verdict, to pronounce sentence, without any objection from the defendant, his silence is a waiver of his

right to a postponement of judgment. *Hosoda v. Neville*, 45 Mont. 310, 312, 123 Pac. 20.

§ 9617.

An appeal may be taken by oral notice at the time of the rendition of the verdict or judgment. *In re Graye*, 36 Mont. 398, 93 Pac. 66.

§ 9621.

Cited in a prosecution for an offense against the local option law. *State v. O'Brien*, 35 Mont. 491, 90 Pac. 514.

The result of an appeal from a justice's judgment is to abrogate the justice's judgment, and the defendant cannot complain, on habeas corpus, of any irregularity committed by the justice in rendering it. *Hosoda v. Neville*, 45 Mont. 310, 313, 123 Pac. 20.

A party cannot, under the guise of an application for a trial de novo, insist that irregularities, to which he made no objection, shall be taken note of, or that the judgment, which is abrogated by the appeal, be reversed on account of them. It is therefore immaterial, on the trial of the case appealed, whether the justice lost jurisdiction by conducting the trial in part on a legal holiday, or failed to comply with the statute in giving judgment, or pronouncing sentence. *In re Graye*, 36 Mont. 401, 93 Pac. 66.

The original files, together with a copy of the docket minutes, may be regarded as constituting the record on appeal from a justice of the peace to the district court. *In re Graye*, 36 Mont. 397, 93 Pac. 66.

It is not decided whether the notice of appeal from a justice's judgment, without the giving of an undertaking by the defendant, has the effect of removing the case to the district court; but, if the giving of the notice does of itself effectuate the appeal, the defendant is not then held in execution of the judgment, but under the original warrant of arrest, awaiting trial de novo in the district court. *Hosoda v. Neville*, 45 Mont. 310, 313, 123 Pac. 20.

HABEAS CORPUS.

§ 9641.

An order allowing bail, in a homicide case, is properly made, in the absence of a showing, by the county attorney, that the proof of the defendant's guilt was evident or the presumption thereof great.

State v. District Court, 35 Mont. 507, 90 Pac. 513.

§ 9644.

One who has been sentenced to state prison for an offense which constitutes

only a misdemeanor is entitled to a discharge on habeas corpus. *State v. District Court*, 35 Mont. 321, 89 Pac. 63.

The fact that the petitioner for a writ of habeas corpus has a plain remedy by way of appeal is no argument against the issuance of the writ. *State v. District Court*, 35 Mont. 326, 89 Pac. 63.

Jurisdiction to render the particular judgment is as essential to the validity of a judgment as jurisdiction of the person or subject matter. *State v. District Court*, 35 Mont. 325, 89 Pac. 63.

Editorial Notes.

Sentences not authorized by law, when authorize discharge upon habeas corpus. 55 Am. St. Rep. 267.

Release of prisoner under habeas corpus because not given a speedy trial. 85 Am. St. Rep. 202; Ann. Cas. 1912D, 1273.

Right of bailed person to writ of habeas corpus. Ann. Cas. 1912C, 951; 35 L. R. A. (N. S.) 882.

Right of person in custody under judgment to be discharged on habeas corpus when judgment ceases to be operative. Ann. Cas. 1913B, 878.

§ 9645.

If a person after a preliminary examination, is committed for grand larceny, and, upon his suing out a writ of habeas corpus, on the ground that he is guilty of petit larceny only, it appears from the evidence before the justice that he was guilty at least of petit larceny and that there was a reasonable basis for the belief that he was guilty of grand larceny, it is the imperative duty of the court to remand him. *In re Jones*, 46 Mont. 122, 125, 126 Pac. 929.

§ 9648.

It is proper to allow bail, in a homicide case, in the absence of a showing, by the county attorney, that the proof of the defendant's guilt is evident or the presumption thereof great. *State v. District Court*, 35 Mont. 507, 90 Pac. 513.

§ 9650.

Awarding custody of child, brought from another state, after divorce. See note ante, § 3678.

SEARCH-WARRANTS.

§ 9677.

The use of search-warrants is not to be extended by construction to any case not clearly covered by the statute. *State v. Justice's Court*, 45 Mont. 375, 382, 48 L. R. A. (N. S.) 156, 123 Pac. 405.

Violations of city ordinances are not included in the words "public offense," as those words are used in this section. *State v. Justice's Court*, 45 Mont. 375, 381, 48 L. R. A. (N. S.) 156, 123 Pac. 405.

The alleged threatened violation of a town ordinance, by conducting a saloon without first obtaining a license, does not authorize the issuance of a search-warrant commanding that a designated building be searched for intoxicating liquors. *State v. Justice's Court*, 45 Mont. 375, 382, 48 L. R. A. (N. S.) 156, 123 Pac. 405.

Editorial Notes.

Violation of a municipal ordinance as a public offense or crime. 48 L. R. A. (N. S.) 156.

REWARDS.

§ 9699a. Rewards by County Commissioners for Apprehension of Criminals.

The board of county commissioners of each county has the power to offer rewards for the apprehension and conviction of any person or persons who have committed any felony within their respective counties. Said reward shall not exceed the sum of five hundred dollars for the apprehension and conviction of the party or parties guilty of a felony and the reward shall not be paid in any case until a conviction has first been had in the case. All rewards shall be paid by warrants drawn on the general fund of the county. In no case shall the members of the board of county commissioners, sheriff, or other county officer receiving an annual or monthly salary, be entitled to any part of any such reward. [Approved March 3, 1909; Laws 1909, c. 61, p. 67.]

PRISON AND JAILS.

§ 9716.

Procedure by board. See note post, § 9738.

§ 9720. Warden of State Prison—Appointment, Salary, Removal.

A warden of the state prison shall be appointed by the Governor, and such appointment must be transmitted to and approved by the Senate. The tenure of office of the appointee shall be for a period of four years from the date of appointment and until his successor has been appointed and qualified. The salary of the warden is hereby fixed at the sum of four thousand dollars (\$4,000) per year, payable in monthly installments of three hundred thirty-three and 33-100 dollars (\$333.33) each, at the end of each and every month. The warden shall be subject to removal by the state board of prison commissioners at any time for misfeasance, nonfeasance or malfeasance in office, but before he is so removed formal charges in writing must be preferred and the warden given opportunity to appear and defend himself against any such charges. When charges shall have been preferred, asking the removal of the warden, notice of the time and place of hearing of said charges shall be served upon him at least five days prior to the date set for the hearing, provided, however, that when such charges have been preferred, the state board of prison commissioners shall have the power and authority to suspend the warden until after the determination of the charges preferred against him. [Amendment approved February 10, 1913; Laws 1913, p. 9.]

The warden of the state penitentiary is a public officer. *State v. District Court*, 43 Mont. 571, 577, Ann. Cas. 1912C, 343, 118 Pac. 268.

In order to carry out the provisions of sections 9716, 9737, and of this section, which seems to indicate a course of procedure for the board of prison commissioners, the board must investigate the record of every convict, probably at the end of every year of his service, and grant the proper credits, if earned. *Stephens v. Conley*, 48 Mont. 352, 366, 138 Pac. 189.

§ 9737.

Procedure by board. See note post, § 9738.

§ 9738.

Board of state prison commissioners. See ante, § 9716.

Commutation of sentence. See ante, § 9737.

§ 9773.

Authority to hold one committed for contempt. See note ante, § 9377.

INDUSTRIAL SCHOOL.

§ 9818. Change of Name of State Reform School.

(Section 1.) That from and after the passage and approval of this act the name of the Montana State Reform School shall be the "Montana State Industrial School." [Approved March 9, 1915; Laws 1915, c. 136, p. 299.]

§ 9819. Powers and Duties of Trustees of Industrial School.

(Section 2.) That the objects and purposes of the Montana State Reform School as now provided by law shall be and they are hereby made the objects and purposes of the Montana State Industrial School. And the board of trustees of the Montana State Reform School shall have and they are hereby vested with the same powers, duties and obligations as a board of trustees of the Montana State Industrial School as is now vested in them as the board of trustees of the Montana State Reform School. [Approved March 9, 1915; Laws 1915, c. 136, p. 299.]

§ 9820. Powers and Duties of Officers—Statutes Applicable to School.

(Section 3.) That the director and all other officers and employees of the Montana State Reform School shall be and they are hereby vested with all the powers, duties and obligations as such director, officers and employees of the Montana State Industrial School as they now have as director, officer and employees of the Montana State Reform School. And all existing statutes or other provisions of law relating to the Montana State Reform School are hereby made applicable to the Montana State Industrial School. [Approved March 9, 1915; Laws 1915, c. 136, p. 299.]

§ 9821. State Industrial School Fund.

(Section 4.) That the fund created by the provisions of section 9816 of the Revised Codes of Montana shall hereafter be known as "The State Industrial School Fund." [Approved March 9, 1915; Laws 1915, c. 136, p. 299.]

PART VI.

MISCELLANEOUS LAWS.

APPROVAL OF CODES OF 1907.

Chapter 1, Laws 1909, page 3.

"An act to approve, legalize and adopt the division and arrangement of the Revised Codes of Montana of 1907."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The division and arrangement into codes, parts, titles, chapters, articles and sections of the Revised Codes of Montana of the year 1907, as reported by the Code Commissioner, appointed under the authority of chapter 85 of the Laws of the Tenth Legislative Assembly of the state of Montana, are hereby approved, confirmed, legalized and made effectual and valid, and it shall be sufficient reference to any law in said codes, in citing or amending the same, to give the number of the section and to add thereto the words "Revised Codes of 1907."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved this 2d day of February, 1909.

By approving, legalizing and adopting the codification of 1907 as the "Revised Codes of Montana" the legislature made that compilation the law of the state as superseding the several statutes from the material of which it was prepared. State ex rel. Frost v. Barnett, 49 Mont. 256, 141 Pac. 287.

Any ground for assuming formerly that

the amendment to the attachment statute (L. 1899, § 6662), was not intended to affect the execution statute, in respect to the manner of levying upon personal property, was removed by the adoption of the Revised Codes of 1907, section 6821 of which covers the subject. Wheeler Motler Merc. Co. v. Moon, 49 Mont. 307, 316, 141 Pac. 665.

PROCEEDINGS OF CONSTITUTIONAL CONVENTION.

Chapter 142, Laws 1911, page 424.

An act to authorize the State Board of Examiners of Montana to prepare and have indexed, printed and bound copies of the debates, and proceedings of the Constitutional Convention of the state of Montana and to provide for the distribution of the same, and providing an appropriation therefor.

Be it enacted by the Legislative Assembly of the State of Montana:

Printing of Debates and Proceedings of Constitutional Convention.

Section 1. The State Board of Examiners is hereby authorized and directed to prepare copies of, to have indexed, printed and bound at least five hundred (500) copies of the debates and proceedings of the Constitutional Convention of the state of Montana.

Bids for Printing and Binding.

Section 2. The said State Board of Examiners shall have authority and are hereby given authority to advertise for bids for the printing and

binding of such debates and proceedings of the Constitutional Convention of the state of Montana, and to make all contracts in connection therewith.

Preparation of Manuscript for Publishing.

Section 3. The said State Board of Examiners is hereby authorized and directed to prepare the said debates and proceedings of the Constitutional Convention of the state of Montana in such suitable manner as may be necessary for printing same.

Disposition of Printed Copies.

Section 4. Upon the said proceedings and debates of the Constitutional Convention of the state of Montana being printed and bound, the Secretary of State is hereby authorized and directed and shall deliver to the state historical library, three copies of the said debates and proceedings of the Constitutional Convention of the state of Montana; to the state law library, two copies thereof; to the state supreme court, two copies thereof; to the library of Congress, one copy thereof; to the circuit court of the United States, ninth circuit in and for the district of Montana, one copy thereof.

State Law Library to be Supplied.

Section 5. The Secretary of State is hereby authorized and directed to furnish to the law library of the state of Montana such copies of the said debates and proceedings of the Constitutional Convention of the state of Montana as may be necessary for exchanges.

Appropriation.

Section 6. That seventy-five hundred (7500) dollars or so much thereof as may be necessary be and the same is hereby appropriated out of any moneys in the state treasury not otherwise appropriated for the objects and purposes herein above expressed.

ABSTRACTERS OF TITLE.

Chapter 43, Laws 1915, page 62.

"An act to compel abstracters of title to real estate to file a bond for the protection of those with whom they deal, and to procure a seal; to provide for the issuance of a certificate of authority to such abstracters; providing that their fees are a matter of contract; also that any properly certified abstract of title shall be prima facie evidence in the courts; also providing for a new or additional bond and the procedure to be followed in procuring the same, including an appeal to the district court; and providing penalties for the violation of this act."

Be it enacted by the Legislative Assembly of the State of Montana:

Abstracter to Give Bond.

Section 1. It shall be a misdemeanor for any person, firm of corporation to engage, or continue, in the business of making or compiling abstracts of title to real estate, in the state of Montana, for compensation or hire, without first filing with the state treasurer [of the county in*

*(NOTE BY SECRETARY OF STATE. The words in brackets were not in the engrossed bill, but were stricken out. Their inclusion is evidently an error in enrolling.)

which such business is conducted,] a bond or undertaking, in the penal sum of five thousand (\$5,000) dollars, running to the state of Montana, for the use of any person aggrieved, with sufficient sureties, to be approved by the judge of the district court; such sureties shall be at least two in number if personal sureties are furnished; such bond or undertaking shall be conditioned for the faithful performance of duty by such abstractor, and the payment of any and all damages that any person may suffer by reason of any error, deficiency or mistake in any abstract or certificate of title, or any continuation thereof, made or issued by such abstractor.

Certificate from State Treasurer to Abstractor.

Section 2. When any abstractor shall have filed a bond or undertaking as herein provided, he or it, shall be entitled to receive from the state treasurer a certificate reciting that he or it is entitled to engage in the business of making and compiling abstracts of title to real estate in the state of Montana, which certificate shall be valid so long as the bond given by such abstractor shall remain unimpaired and no longer. The state treasurer shall be entitled to receive a fee of one dollar (\$1) for issuing such certificate.

Compensation of Abstractor.

Section 3. The compensation to be charged and received by abstractors of title shall be and remain a matter of contract between the parties.

Abstracts as Prima Facie Evidence.

Section 4. Any abstract of title to real estate, certified to be true and correct by any abstractor holding a valid and subsisting certificate of authority from the state treasurer, as herein provided, shall be received by the courts of this state as prima facie evidence of its contents, under such rules and regulations as to procedure as such courts may promulgate.

Renewal of Bond Annually—Additional Bond.

Section 5. The bond or undertaking herein provided for shall be in full force and effect for a period of one year, and shall be renewed annually; but the Attorney General may, upon complaint of any reputable citizen, require such abstractor, upon ten days written notice, to furnish a new or additional bond, or to show cause before the state treasurer why he or it has not done so, and if within said ten days no new or additional bond has been filed, with approved sureties, and not any sufficient reason is shown to the state treasurer why a new bond should not be required, then the state treasurer shall, in writing, annul the certificate of authority of such abstractor.

Complaint Against Abstractor—Hearing and Costs.

Section 6. It is the duty of the Attorney General to appear before the state treasurer in behalf of the complainant and to cause a transcript of any testimony taken to be made by a stenographer; either the abstractor or the complainant may appeal to the district court of the county in which the complainant resides from the decision of the state treasurer, who shall certify the record, including the testimony, to said court; the district court shall hear the appeal in a summary way; on such record, and the

costs of such appeal, including the furnishing of the testimony shall be taxed against either the abstracter or the complainant, whichever is defeated on such appeal.

Seal of Abstracter.

Section 7. Any abstracter qualifying under the provisions of this act shall procure a seal, which seal shall have stamped thereon the name and location of such abstracter; and shall deposit with the state treasurer an impression of such seal before a certificate shall issue; which said seal shall be affixed to every abstract, or certificate of title issued by such abstracter.

Penalty for Violation of Law.

Section 8. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500) for each offense.

Repeal of Conflicting Acts.

Section 9. All acts and parts of acts in conflict with this act are hereby repealed.

Section 10. This act shall be in full force and effect on and after the first day of April, 1915.

Approved February 27, 1915.

Editorial Notes.

Liability of abstracter of title on account of abstract made by him. 12 Ann. Cas. 410; Ann. Cas. 1912B, 840.

Liability of title abstracter. 12 L. R. A. (N. S.) 449; 26 L. R. A. (N. S.) 1207; 42 L. R. A. (N. S.) 176.

PUBLIC ACCOUNTANTS.

Chapter 39, Laws 1909, page 43.

"An act to regulate the practice of the profession of public accounting."

Be it enacted by the Legislative Assembly of the State of Montana:

Certified Public Accountants.

Section 1. That any person having been granted by the University of Montana (a corporation organized and existing under the laws of this state and hereinafter referred to as the "University") a certificate of his competency to practice as a public expert accountant shall be known as, and styled, a "Certified Public Accountant" and shall be authorized to use the initials "C. P. A." after his name; and no person who has not received such certificate, nor any partnership all the members of which have not received such certificates, and no corporation shall assume such title or the title "Certified Accountant" or "Chartered Accountant" or the letters "C. P. A." or "C. A." or any other words or letters or abbreviations tending to, or intending to, indicate that the persons, firm or corporation using them is a Certified Public Accountant within the meaning of this act.

Determination of Qualifications.

Section 2. The University shall, through a Board of Examiners by it appointed, determine the qualifications to all applicants for a certificate

under this act. The Board of Examiners shall consist of three persons skilled in the knowledge, theory and practice of accounting in all its branches and in commercial law as affecting accountancy, each one of whom shall be the holder of the degree of "Certified Public Accountant" granted to him under this act or be entitled to receive the degree without examination in accordance with the purport and intent of clause (3) of section 4 of this act. The examiners shall hold office for the period of three years and until their successors are appointed and qualified; except that of the three examiners first appointed under this act, one shall hold office for one year and one for two years.

Examination of Applicants.

Section 3. A certificate as a "Certified Public Accountant" shall be granted to any person, a citizen of the United States or having in good faith and in the manner required by law declared his intention of so becoming, of the age of twenty-one years, of good moral character, a graduate of an accredited high school or having an equivalent education and (except under the provisions of section 4 of this act) who shall have been certified to the University by the said Board of Examiners as having successfully passed, (a) a written examination in "Theory of Accounts," "Practical Accounting," "Auditing," "Commercial Law as Affecting Accountancy" and such other subjects as the University may designate, and (b) an oral examination of sufficient scope, thoroughness and severity to test and to determine the fitness of the examinee to practice as professional accountant. Any person shall be eligible to and permitted to take such examination who has had three years' practical experience in accounting acquired (a) practicing on his own account, or (b) in the office of a public accountant or (c) in a responsible accounting position in the employ of a business corporation, firm or individual. All such examinations shall be conducted by the Board of Examiners herein provided for and not less than thirty days prior to the date of each examination the time and place of holding it shall be noticeably advertised for not less than three consecutive days in three representative daily newspapers published in the state. The examination shall take place as often as, in the opinion of the University, may be necessary but not less frequently than one each year.

The University shall make all useful rules and regulations regarding the conduct, character and scope of the examinations, the method and time of filing and the form and contents of applications therefor and all other rules and regulations necessary to carry into effect the purposes of this act.

Accountants from Other States or Countries.

Section 4. Upon the recommendation of the Board of Examiners the University may in its discretion waive the examination of, and issue the degree of Certified Public Accountant, to any person a citizen of the United States or having in good faith and in the manner required by law declared his intention of so becoming a resident of the state of Montana or maintaining a regular place of business therein who is, (1) the holder of a C. P. A. certificate issued under the laws of another state which extends like privileges to Certified Public Accountants of this state; provided the requirements for said degree in said other state are, in the opinion of the Board of Examiners, equivalent to those herein stipulated, or (2) the holder of the degree of "Certified Public Accountant," or

"Chartered Account" or the equivalent thereof issued in any foreign government; provided that the requirements, for said degree in said foreign government are, in the opinion of the Board of Examiners, equivalent to those herein stipulated, or (3) of the age of twenty-five years, of good moral character, a graduate of an accredited high school or having an equivalent education, who has had at least three years' experience in the practice of public accounting in this state and whose qualifications are in every respect equal to those assumed and implied by the successful passing of the examinations stipulated in section 3 of this act and who is personally known to the Board of Examiners to be so qualified as a competent and skilled accountant in theory and in practice and who shall apply in writing to the University for said certificate within one hundred and eighty days after the passage of this act.

Revocation of Certificates.

Section 5. The University may for unprofessional conduct or for other sufficient cause revoke, or cancel the registration of any certificate issued under this act; provided that written notice of the cause for such contemplated action and the date of the hearing thereon by the University shall have been mailed to the holder of such certificate at least thirty days before said hearing and no certificate issued under this act shall be revoked until said hearing shall have been held.

Fees to be Paid by Applicants.

Section 6. Each candidate for the examinations provided for in this act and each applicant for a certificate under section 4 of this act shall pay in advance to the University a fee of twenty-five dollars (\$25) to defray the expenses of such examinations; except that any candidate failing to pass the required examination shall be entitled to take a second examination without further fee. The examiners appointed under the provisions of this act shall be reimbursed for all legitimate traveling and hotel charges expended in the performance of their duties as such but shall not receive any compensation for their time likewise expended. From the fees collected under this act the University shall pay all the expenses of, and incident to the examinations, the expenses of issuing certificate and the traveling and hotel expenses of the examiners while performing their duties under this act, and at the close of each calendar year any surplus remaining after the payment of the year's expenses, shall become the property of the University and in no event shall any expenses incurred under this act be a charge against the funds of the University nor of the state.

Practicing Without Certificate—Penalty.

Section 7. If any person shall falsely represent himself to the public as having the certificate provided for in this act, or shall assume to practice as a Certified Public Accountant without having received such certificate, or having received such certificate shall thereafter lose it by revocation, and shall continue to practice as a Certified Public Accountant, or shall without warrant of law use such title or any other title mentioned in section 1 of this act, or if any person shall violate any of the provisions of this act, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than one hundred (\$100)

dollars nor more than five hundred (\$500) dollars or imprisonment in the county jail for a period of not less than one month nor more than six months, or both, in the discretion of the court, for each day during which he shall so unlawfully practice or violate any of the provisions of this act.

Section 8. This act shall take effect from and after its passage and approval by the Governor.

Approved February 27, 1909.

STATE ACCOUNTANT.

Chapter 86, Laws 1909, page 116.

An act entitled "An act to provide for the appointment by the State Board of Examiners of a State Accountant to examine the books and financial affairs of state institutions, defining his duties and fixing his salary."

Be it enacted by the Legislative Assembly of the State of Montana:

Appointment by State Examiners.

Section 1. The State Board of Examiners shall appoint a State Accountant, who shall hold his office for the term of four years unless sooner removed by the board.

Powers and Duties of State Accountant.

Section 2. The State Accountant shall have the power, and it shall be his duty:

1. To examine, at least once every three months, the books and accounts of the treasurer and secretary of each of the following institutions, to wit: University of Montana, Montana State Normal School, Agricultural College of Montana, State Orphans' Home, Montana State School of Mines, Montana School for the Deaf and Blind, State Reform School, Soldiers' Home, State Prison, Montana State Fair, and State Insane Asylum; also to examine into the general financial affairs and conditions of each of said institutions.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to any of said institutions, or managed or controlled by them, and to require of all officers, directors and other persons connected with the financial affairs of such institutions an adherence to such general method and details as are required by law or said State Accountant to be adopted and observed by such institutions; provided, that before any such general method and details of accounting, or any special rules are put into force in any of such institutions, they shall first be approved by the State Board of Examiners.

3. After the examination of the affairs, books, and accounts of said institutions to make full report of such examinations to the State Board of Examiners within thirty days after such examination.

4. Said State Accountant shall also perform such other duties or work of the State Board of Examiners as said may order and direct.

Officers of Institutions to Permit Examinations.

Section 3. All boards of directors, officers, employees and other persons connected with the financial affairs of any of the institutions men-

tioned in section 2 of this act must afford all reasonable facilities for the examination of accounts and investigations provided for in this act, and all boards of directors, officers, employees and other persons connected with the financial affairs of any said institutions must make returns and exhibits to said accountant, under oath, in such form and in such manner as he may prescribe, not conflicting with the law and the rules and regulations approved by the State Board of Examiners. Every director, officer, employee or other person, willfully violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars.

Refusal to Comply With Methods of Accounting.

Section 4. The refusal or neglect of any member of the executive board or other officer or employee of any of said institutions to comply with the general methods and details of accounting prescribed by the State Accountant, as authorized in paragraph 2 of section 2 of this act, shall constitute a good and sufficient ground to summarily remove said person from said board, office or position by the State Board of Examiners.

Salary, Oath and Bond of Accountant.

Section 5. The salary of said State Accountant shall be eighteen hundred dollars per annum, and on entering upon the discharge of the duties of such position he shall take the constitutional oath of office and file a bond in such sum as shall be fixed by the State Board of Examiners, to be approved by said board.

Section 6. All acts and parts of acts in conflict herewith are hereby repealed.

Section 7. This act shall be in full force and effect from and after its passage and approval.

Approved March 5, 1909.

STATE BOARD OF ENTOMOLOGY.

Chapter 120, Laws 1913, page 466.

"An act to create the State Board of Entomology, to define its powers and duties and appropriate money therefor."

Be it enacted by the Legislative Assembly of the State of Montana:

Members of Board of Entomology.

Section 1. There is hereby created the Montana State Board of Entomology, which shall be composed of the State Entomologist, the Secretary of the State Board of Health and the State Veterinarian.

Secretary of Board.

Section 2. The Secretary of the State Board of Health shall be chairman of said board and the State Entomologist shall be secretary.

Compensation and Expenses.

Section 3. None of the members of said board shall receive any compensation other than that already allowed by law except that the actual expenses of members while engaged in the duties incident to the work of said board shall be paid out of the appropriation made to carry on the work of said board.

Duty of Board to Investigate—Dissemination of Diseases by Insects.

Section 4. It shall be the duty of said board to investigate and study the dissemination by insects of diseases among persons and animals, said investigation having for its purpose the eradication and prevention of such diseases.

Eradication of Diseases Transmitted by Insects.

Section 5. Said board shall take steps to eradicate and prevent the spread of Rocky Mountain tick fever, infantile paralysis and all other infectious or communicable diseases that may be transmitted or carried by insects.

Rules, Regulations and Quarantine.

Section 6. Said board shall have authority to make and prescribe rules and regulations including the right of quarantine over persons and animals in any district of infection and shall have the right to designate and prescribe the treatment for domestic animals to prevent the spread of such diseases; but said board shall not have the right to prescribe or regulate the treatment given to any person suffering from any infectious or communicable diseases.

Regulations to be Approved by Board of Health.

Section 7. All rules and regulations of the State Board of Entomology shall be subject to approval by the State Board of Health.

Publication of Rules.

Section 8. The board shall publish in printed form all rules and regulations which shall be adopted by said board for the eradication and control of diseases of any kind and such rules and regulations shall be circulated among the residents of every district affected thereby.

Penalty for Violation of Act.

Section 9. Any person who shall violate any of the rules or regulations of the State Board of Entomology shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not in excess of one hundred (\$100) dollars, or by imprisonment in the county jail for any period not exceeding thirty (30) days or by both such fine and imprisonment.

Appropriations.

Section 10. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of five thousand (\$5,000) dollars, or so much thereof as may be necessary to carry on the work of the State Board of Entomology for the year 1913, and the sum of five thousand (\$5,000) dollars or so much thereof as may be necessary to carry on the work of said board for the year 1914. Said money to be expended under the direction and approval of the State Board of Examiners.

STATE DAIRY COMMISSIONER.

Chapter 77, Laws 1913, page 307.

"An act creating the office of a State Dairy Commissioner of the state of Montana, fixing the salary and making an appropriation for the carrying out of the provisions of this act, and defining the duties thereof; providing for deputies; prescribing the duties of said dairy commissioner and his deputies; defining dairy products and imitation of dairy products; regulating the production, sale and shipment of cream, milk, butter, ice-cream, condensed milk and cheese; providing for the inspection of creameries, cheese, condensed milk and ice-cream factories, dairies and utensils; providing penalties for the violation of this act and repealing all acts in conflict herewith."

Be it enacted by the Legislative Assembly of the State of Montana:

Appointment of Dairy Commissioner—Deputies—Salaries and Expenses.

Section 1. That there is hereby created the office of the State Dairy Commissioner and immediately upon this act becoming effective, the Governor of the state of Montana shall appoint a State Dairy Commissioner for the term of four years at an annual salary of two thousand four hundred (\$2,400) dollars, who shall appoint, with the approval of the Governor, two deputies at an annual salary each of one thousand two hundred (\$1,200) dollars.

The said State Dairy Commissioner shall have a practical knowledge and experience in the manufacture of dairy products, the production of dairy products on the farm and the feeding and handling of dairy cattle.

The State Dairy Commissioner and his deputies shall be entitled to their necessary and actual traveling expenses incurred in the discharge of their official duties, to be paid at the end of each calendar month upon duly itemized and certified bills in like manner as the traveling expenses of the other state officials are paid.

The necessary and traveling expenses of the State Dairy Commissioner shall not exceed one thousand (\$1,000) dollars, and that of each of his deputies shall not exceed one thousand five hundred (\$1,500) dollars each, in any one year.

The said Dairy Commissioner shall be furnished with an office in the state capitol.

Said deputies shall act under the general control and direction of the State Dairy Commissioner, and shall be subject to removal by said Dairy Commissioner, subject to the approval of the Governor.

One of said deputies shall be detailed by said Dairy Commissioner to give one-half of his time to the inspection and promotion of, and instruction in the manufacture of dairy products, such as butter, cheese, condensed milk and ice-cream. This deputy, under the direction of the commissioner, shall visit all factories and take necessary time to give such advice and practical instruction as to insure the successful operation of said factories or plants throughout the state. This section does not prohibit said deputy in the course of his regular duties from performing any of the duties of the Dairy Commissioner as prescribed in this act.

Appropriation for Salary and Expenses.

Section 2. For the purpose of carrying into effect the provisions of this act, there is hereby appropriated for the purpose of paying the salary

of the State Dairy Commissioner, and his deputies, hereinbefore provided, and the necessary expenses of the said Dairy Commissioner, and his deputies as herein provided, for the fiscal year 1913, the sum of eight thousand eight hundred (\$8,800) dollars, or so much thereof as may be necessary, and for the fiscal year of 1914 the sum of eight thousand eight hundred (\$8,800) dollars, or so much thereof as may be necessary.

Duties of Commissioner.

Section 3. It shall be the duty of the said State Dairy Commissioner or his deputies, to inspect or cause to be inspected all creameries, dairies, butter, cheese, condensed milk or ice-cream factories, or any place where milk or cream or their products are produced, handled, or stored within the state, at least once a year, or oftener, if possible.

It shall be the duty of the said Dairy Commissioner to act upon all reports or complaints that he may receive from owners and managers of public dairies, creameries, butter, cheese, condensed milk and ice-cream factories, or other persons, wherein it is reported to him the names and locations of one or more producers of milk, cream, butter cheese, condensed milk or ice-cream who are offering for sale milk, cream, butter, cheese, condensed milk or ice-cream that is not fresh and clean, and in such instance he may inspect barns or farm houses, creameries, factories, or other places where dairy products or utensils are produced, kept, stored, handled or sold, and he may give advice and instruction in the proper performance of the work, and he may prohibit the sale of unclean or unwholesome milk, cream, butter, cheese, condensed milk or ice-cream.

It shall be his duty to condemn for food purposes all unclean or unwholesome milk, cream, butter, cheese, condensed milk or ice-cream, whenever he may find them. This is to include all dairy products produced or manufactured where proper rules of sanitation are not observed.

That where he condemns unclean or unwholesome dairy products said products must be so treated as to render impossible the manufacture or renovation of such products for human food.

That he shall in all cases where he finds that the law as herein provided has been violated, it shall be his duty to so inform the county attorney where the violation has been committed, and that said county attorney shall then investigate the charges of violation of this act, made in his county and to prosecute all cases where evidence of guilt is shown.

That he shall preserve in his office all correspondence, records, documents and property of the state pertaining thereto, and turn over the same to his successor.

It shall be the duty of the State Dairy Commissioner to compile and publish statistics concerning all phases of the dairy industry of the state, and that said statistics be mailed out by him so as to advertise and thereby encourage the dairy industry in this state, and that it shall be the duty of the said Dairy Commissioner to gather information and statistics regarding the possibilities of the dairy industry in the state, and to act in conjunction with the Bureau of Publicity of the state, and that they together advertise these statistics and information among the eastern farmers with a view to settling up of the available lands of the state; that he also encourage the investment of outside capital for the establishment of factories, for the production of butter, cheese, condensed milk and other dairy products.

It shall be the duty of the State Dairy Commissioner to co-operate with and act in conjunction with the Montana State Agricultural College in the

carrying out of the duties of his office as herein provided, and that they together hold farm institutes and special dairy meetings for the advertising of the production and manufacture of dairy products.

The said State Dairy Commissioner and his deputies are hereby authorized, and it shall be his duty to enter at any time all creameries, public dairies, cheese, condensed milk and ice-cream factories, or other places where dairy products are manufactured, produced, stored or kept for sale or transportation, for the purpose of inspecting the same; to take samples anywhere of dairy products, or imitation thereof, suspected of being made or sold in violation of the law, and cause the same to be analyzed or satisfactorily tested by the chemist of the State Pure Food Department.

That the sample taken as above prescribed shall be taken in duplicate and one of the same delivered to the manufacturer of the dairy product so sampled. Due notice in writing shall be given to the manufacturer of the date and hour on which a sample will be tested or analyzed by the chemists of the State Pure Food Department so that the manufacturer or his representative may be present at such test or analysis.

The State Dairy Commissioner or his deputies shall have the power to examine under oath or otherwise, any person whom they believe has knowledge concerning the violation of any provisions of this act.

The said State Dairy Commissioner shall make an annual report to the Governor not later than January first of each year.

Requirements as to Creamery, Barns and Stables.

Section 4. For the enforcement of the sections of this act "sanitary" will mean that all creameries, dairies, butter, cheese, condensed milk, or ice-cream factories, or any place where milk, cream or any of their products are produced, handled or stored within the state shall score as much as sixty-five per cent of the government score card or modifications thereof, suitable to the conditions of Montana. Each inspector or person authorized by the state to make such inspection shall leave with the owner or proprietor a duplicate of score card.

All barns, stables or other buildings in which dairy cattle are housed or stabled, shall be of such proportion as to allow three hundred and fifty cubic feet of air space for each and every cow therein. All such buildings must be lime washed throughout at least once every year and have two square feet opening for every animal stabled therein, but the specifications as herein prescribed shall not be deemed to apply to persons who milk but five cows or less.

All manure accumulating in such buildings to be removed at least once every twenty-four hours, and during the months of May to September, inclusive, of each year, must be deposited at a distance not less than fifty feet from such buildings.

The State Dairy Commissioner shall keep a record of each inspection with the address of the premises inspected, and shall record the number of cows kept and the quality of dairy products handled.

Requirements as to Milk and Butter.

Section 5. Milk is the fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and five days after calving, and contains not less than eight and one-half (8.5) per cent of solids not fat, and not less than three and one-quarter (3.25) per cent of milk fat.

Adulterated milk is milk containing more than eighty-eight (88) per cent water and less than eleven and three-quarters (11.75) per cent of total solids, eight and one-half (8.5) per cent solids not fat, and three and one-quarter (3.25) per cent fat, except milk for manufacture; milk which has been diluted with water or into which has been introduced any foreign substance whatever. This includes all substances added for the purpose of preserving, coloring and thickening milk or cream, or milk handled in an unsanitary manner.

Cream is that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, fresh and clean, and contains not less than twenty (20) per cent of milk fat.

Butter is the clean accumulated milk fat from unadulterated milk or cream with or without addition of salt or coloring matter, containing not less than eighty-two and one-half (82.5) per cent of butter fat and not more than sixteen (16) per cent water.

Cheese is the sound, solid and ripened product made from milk or cream by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments, seasoning and coloring matter and contains, in the water-free substance, not less than fifty (50) per cent of milk fat.

Ice-cream is a frozen product made from cream, gelatine and sugar, with or without flavoring, and contains not less than fourteen (14) per cent of milk fat, and not more than one (1) per cent pure gelatine.

Oleomargarine, butterine, imitation butter or imitation cheese are substances made in imitation of butter or cheese, but not entirely from pure milk or cream in the usual way. They may be construed to mean any article or substance into which any oil, lard or fat, not produced milk or cream enters as a component part.

Adulteration of Milk and Cream—Labels.

Section 6. No person shall sell or exchange or offer or expose for sale or exchange as milk or cream, any unclean, impure, adulterated or unwholesome milk, or unclean, impure, adulterated, colored or unwholesome milk or cream, or sell or exchange, or offer or expose for sale or exchange, any substance in imitation or semblance of milk or cream which is not milk or cream, nor shall they sell or exchange, or offer or expose for sale or exchange, any such substance as, and for milk or cream, or sell or exchange, or offer or expose for sale or exchange, any article of food made from such milk or cream, or manufacture from any such milk or cream, any article of human food.

Any person delivering milk or cream to any butter or cheese factory, condensing milk gathering station or railway station to be shipped to any city, town or village shall be deemed to expose or offer the same for sale whether the said milk or cream is consigned to himself or another. Each and every can thus delivered, shipped or consigned, if it be not pure milk or cream, must bear a label or card upon which shall be plainly and legibly stated the constituents or ingredients of the contents of the can. There shall be no limit to the percentage of fat contained in unadulterated milk or cream sold to creameries for the sole purpose of manufacture into butter.

Milk Receptacles—Requirements Concerning—Name of Owner.

Section 7. No person or persons shall, without the consent of the owner or owners, use, sell, dispose of or traffic in any milk cans, jar bottles

or milk or ice-cream receptacles belonging to any dealer or shipper of milk or milk products having the name or initials of the owner on such cans, jars, bottles or other receptacles. No person shall willfully mar, change or erase the name or initials stamped or fastened upon sealed milk receptacles or vessels for other purposes, nor place any other substance than milk or its products in them.

Whenever any cans, vessels or other receptacles used in the transportation of milk, cream or their products are returned to the producer for a fresh shipment of the product, they must be thoroughly cleaned by washing, rinsing and scalding, so as to make their condition sanitary and suitable as a receptacle for fresh milk and cream or their products.

No person shall place or suffer to be placed in any such can or receptacle any sweeping, dirt, filth or any animal or vegetable substance tending to produce or promote an unsanitary condition.

Milk, cream or ice-cream shall not be handled in cans rusted inside.

Sanitary Places for Products and Appliances.

Section 8. No person shall produce or keep milk or any of its products intended for sale, or exchange in any building or place where conditions are unsanitary and unfavorable to the production of wholesome foods.

Butter and Cheese Factories.

Section 9. Operators of all co-operative butter, cheese and condensed milk factories shall keep their books open for inspection of any patron at all times, showing the daily amounts of milk and cream received and the per cent and amount of fat in the milk and cream received from each patron, and the amounts of cream sold and butter, cheese, or condensed milk manufactured daily.

Every facility should be offered to the patron for keeping himself informed in regard to the business of the butter, cheese and condensed milk factory, and checking up his daily product with his returns.

Registration of Factories.

Section 10. It shall be the duty of every cheese factory, creamery, butter and condensed milk factory, or skimming station, in the state, where milk or cream is purchased or contributed by three or more persons, to register the location of such cheese factory, creamery, butter, or condensed milk factory, or skimming station, and the name of its owner or manager with the Dairy Commissioner on or before the first day of April of each year. Before the organization of any new factory, notice shall be given at once to said Dairy Commissioner.

Babcock Test Regulations.

Section 11. Every person operating the Babcock test in any creamery or cheese factory or other place where milk or cream is bought and paid for on the basis of its fat contents shall be required to pass such examinations as the State Dairy Commissioner shall prescribe, upon the successful completion of which examination, he shall receive a certificate signed by said commissioner, stating his competency to operate the said test.

All test bottles, pipetts and other glassware used in connection with the Babcock test where the fat forms a basis for the payment for the product, shall be handled and calibrated by the State Dairy Commissioner or his deputies as often as the commissioner may prescribe such testing, or calibrating to be done on the premises where such glassware is used.

No owner, manager, agent, or employee of a cheese factory, creamery or condensed milk factory shall falsely manipulate or under-read or over-read the Babcock test or any other contrivance used for determining the quality of milk or cream, or to make any false determination of the said Babcock test or otherwise.

All acid used in Babcock tests shall be of the strength indicated by the specific gravity reading 1.82 on the standard hydrometer.

Imitation Butter—Labels and Placards.

Section 12. No person shall manufacture or sell or expose for sale as butter, any substance out of vegetable or animal fats or oils (not from milk or cream) colored in imitation of butter or any shade of yellow.

All products made and sold or exposed for sale as butter substances and made either wholly or in part from any fat or oil other than from pure unadulterated milk or cream, shall be plainly marked, stamped or labeled on every package, so made, sold or exposed for sale, in plain black letters, one-half inch vertical dimensions, "Oleomargarine." Hotels or restaurants using imitation butter shall place placards, plainly legible from all parts of the dining-room, marked "Oleomargarine" or "Renovated Butter," as the case may be "used here."

Mixing of Extraneous Fats With Cream or Butter.

Section 13. No person shall manufacture, mix or compound with or add to natural milk, cream or butter any animal fats or animal or vegetable oils, nor make nor manufacture any oleaginous substance not produced from milk or cream, with the intent to sell the same as butter or cheese made from unadulterated milk or cream, or have the same in his possession with such intent; nor shall any person solicit orders for same or offer for sale, nor shall any such article or substance or compound so made or produced be sold as or for butter or cheese, the product of the dairy.

Renovated Butter—Label or Stamp.

Section 14. No person shall sell any butter made by taking original packing stock or other butter or both, and melting the same and drawing off, or extracting the butter fat, and mixing such fat with skimmed milk, or cream or other milk product and rechurning or reworking such mixture; or any butter produced by any process commonly known as boiled process, or renovated butter, unless the words "Renovated Butter" shall be plainly branded with bold-faced letters, at least one-half inch in length, on top and sides of such receptacle, package or wrapper in which it is kept for sale or sold. And if such butter is exposed for sale, uncovered and not in a receptacle, package or wrapper, then a placard containing the words "Renovated Butter" shall be attached printed in style and manner, as aforesaid, to the mass of butter in such a manner as to be easily seen and read by purchasers; and in addition to such marking, the seller shall, at the time of sale, stamp the package with the words "Renovated Butter" in letters at least one-half inch in height.

Product Containing Abnormal Quantity of Casein.

Section 15. No person shall sell as pure butter any substance in which an abnormal quantity of casein or other ingredients have been incorporated.

Imitation or Filled Cheese.

Section 16. No person shall manufacture, deal in, sell, offer or expose for sale or exchange, as cheese any article or substance in the semblance of

or in imitation of cheese, made exclusively of unadulterated milk or cream, or both, into which any animal, intestinal, or offal fats or oils, or melted butter in any condition, or state of modification, of the same, or oleaginous substance of any kind not produced from unadulterated milk or cream shall have been introduced.

Coloring of Butter.

Section 17. No person manufacturing with intent to sell, any substance or article in imitation or semblance of butter or cheese not made exclusively from unadulterated milk or cream, or both, with salt or rennet, or both, and with or without coloring matter or sage, but into which any animal, intestinal, or offal fats, or any oils or fats or oleaginous substance of any kind not produced from pure unadulterated milk or cream, or into which melted butter or butter in any condition or state, or any modification of the same, or lard or tallow shall be introduced, shall add thereto or combine therewith any annatto or compound of the same, or any other substance or substances whatever, for the purpose or with the effect of imparting thereto a color resembling yellow, or any shade of yellow butter or cheese, nor introduce any such coloring matter or other substance into any of the articles of which the same is composed.

No person shall coat, powder or color with annatto or any coloring matter whatever, butterine, or oleomargarine or any compound of the same, or any product or manufacture made in whole or in part from animal fats or animal and vegetable oils not produced from unadulterated milk or cream by means of such product, manufacture or compound shall resemble butter or cheese, the product of the dairy; nor shall he have the same in his possession with the intent to sell the same, nor shall he sell or offer to sell the same.

No person or persons shall manufacture, sell, or expose for sale any poisonous coloring matter for coloring of dairy food products of any kind, nor shall any person or persons use in dairy products any poisonous coloring matter manufactured, sold, offered or exposed for sale within the state, nor shall any person or persons sell, offer or expose for sale any dairy food product, containing such poisonous coloring matter.

Sale of Skimmed Milk.

Section 18. Notwithstanding the provisions of the preceding section, milk from which cream has been removed, if such milk is otherwise wholesome and unadulterated, may be sold as such to makers of skim cheese, or to a consumer as hereinafter defined; but in the latter cases only from vessels legibly marked with the words "skimmed milk" in plain black letters upon a light-colored background, and each letter being at least one inch high and one-half inch wide, and said words being placed on the top or side of each vessel. These requirements, however, shall not apply to skimmed or separated milk, delivered to any patron of the creamery who regularly sells milk to the proprietor thereof; but all the milk so delivered shall first be pasteurized at a temperature of at least one hundred and eighty (180) degrees Fahrenheit.

Trademarks.

Section 19. When any dealer in dairy products wishes to retain for himself a name, brand or trademark, the same may be registered with the State Dairy Commissioner, and on no account shall that name, brand or

trademark be used by another, unless duly consigned, given or sold to him by the originator or by the one to whom it belongs.

Weights and Measures.

Section 20. The standard measure of capacity for milk shall be the gallon containing two hundred thirty-one (231) cubic inches; the half gallon shall contain one hundred fifteen and five-tenths (115.5) cubic inches, and the quart one-fourth as much as the gallon, and the pint one-half as much as the quart.

The standard measure for the sale of butter and cheese in the state of Montana shall be sixteen (16) ounces (avoirdupois weight) to the pound when wrapped or put in container exclusive of the wrapper or container. Where weights and measures are stated in pounds and ounces, they shall be exclusive of the wrapper or other container, and each pound shall contain sixteen (16) ounces, each ounce containing four hundred and thirty-seven and one-half (437.5) grains. Any person, persons, firms or corporation selling or offering for sale any article of dairy products as a pound, or any multiple thereof, the next weight of which is less than sixteen (16) ounces, or the proper multiple thereof to represent the number of pounds sold or offered for sale, shall be guilty of a misdemeanor, provided, a reasonable variance be permitted, and that tolerances shall be established by rules and regulations made by the State Dairy Commissioner in accordance with the provisions of this act.

Creation of Monopoly or Destruction of Competition.

Section 21. Any person, firm, copartnership or corporation engaged in the business of buying milk, cream or butter fat for the purpose of manufacture who shall, with the intention of creating a monopoly, or destroying the business of a competitor, discriminate between different sections, localities, communities or cities of this state, by purchasing such commodity at a higher price or rate in one locality than is paid for the same commodity by said person, firm, copartnership or corporation in another locality after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase to the locality of manufacture, shall be deemed guilty of unfair discrimination, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars (\$200), nor more than ten thousand dollars (\$10,000), or by imprisonment for not less than thirty (30) days, nor more than twelve (12) months in the county jail or by both such fine and imprisonment for each offense.

Penalty for Violation of Law.

Section 22. Any person or persons violating any of the sections of this act, except section 21, as provided elsewhere, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than five dollars (\$5) nor more than two hundred fifty dollars (\$250) for each offense.

All acts and parts of acts in conflict with this act are hereby repealed.

This act shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 13, 1913.

POULTRY HUSBANDRY.

Chapter 69, Laws 1913, page 135.

"An act to amend sections 1, 2, 3 and 4, of chapter 116 of the Montana Session Laws of 1911, relating to the establishment of a State Board of Poultry Husbandry, providing the duties of such board, and appropriating money therefor."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That section 1 of chapter 116 of the Laws of 1911, be amended so as to read as follows:

Appointment of State Board of Poultry Husbandry.

Section 1. That the Governor of the state of Montana shall appoint a board as soon as possible after the passage of this act to be known as the State Board of Poultry Husbandry. Said board shall consist of three members, one (1) member of said board shall serve for a term of one (1) year; one (1) member of said board shall serve for a term of two (2) years; and one (1) member of said board shall serve for a term of three (3) years, and at the expiration of their respective terms of office, the Governor shall appoint a successor for the term of three (3) years, or until their successors are appointed and qualified.

Duties of Board.

Section 2. That section 2 of chapter 116 of the Laws of 1911 be amended so as to read as follows:

Section 2. That said board shall investigate and bring to the attention of those engaged in agriculture, and others, the value and importance of poultry-raising in the state of Montana, and publish for free distribution reports and bulletins pertaining to the advancement of poultry husbandry. Said board shall supervise and further local poultry associations, and shall supervise the holding of an annual state poultry exhibition.

Compensation and Reports of Board—Secretary.

Section 3. That section 3 of chapter 116 of the Laws of 1911 be amended so as to read as follows:

Section 3. The said board shall serve without pay, and shall submit an annual report in writing to the Governor on or before the 20th day of December of each year. The said board shall be empowered to appoint a secretary at a salary not to exceed one hundred twenty (\$120) dollars per annum. It shall be the duty of said secretary to attend the meetings of local poultry associations and supervise same when the board deems fit.

Appropriation and Use of Funds.

Section 4. That section 4 of chapter 116 of the Laws of 1911 be amended so as to read as follows:

Section 4. That the sum of five hundred (\$500) dollars, or as much thereof as may be necessary, be, and the same is, hereby appropriated, which sum shall be used for the payment of the salary of the secretary of said board for the purposes of paying per diem and expenses of the secretary when traveling, in a sum not to exceed five (\$5) dollars per day, and the securing of data and information, and for the publication and free distribution of reports and bulletins on poultry husbandry and also for the

providing of suitable coops and fixtures for holding an annual poultry exhibition, and for the purposes of conducting and maintaining an annual state poultry exhibit.

Section 5. All acts and parts of acts in conflict herewith, or inconsistent with the provisions of this act, are hereby repealed.

Section 6. This act shall be in full force and effect from and after the date of its final passage.

Approved March 10, 1913.

FARM LOANS.

Chapter 28, Laws 1915, page 36.

"An act to create a department of farm loans, and provide for the issuance of farm loan bonds; to facilitate the investment of savings in such bonds; to designate the State Treasurer as Commissioner of Farm Loans, and to appropriate money for the use of said department."

Be it enacted by the Legislative Assembly of the State of Montana:

Creation of Department of Farm Loans—Funds—Rules.

Section 1. There is hereby created a department of farm loans, which department shall be in charge of the State Treasurer, who shall be ex-officio Commissioner of Farm Loans to serve without extra compensation. The commissioner may employ with the approval of the Governor such deputy assistance as may be required to discharge the duties of the department, and the cost of such assistance and all other expense of the department shall not be paid out of state funds but shall be paid as hereinafter provided. All funds coming into the hands of the commissioner shall be kept separate and apart from state funds; and the commissioner shall have power to make all necessary rules and regulations to govern said department.

Seal of Department.

Section 2. The Department of Farm Loans shall have a seal bearing the words "Department of Farm Loans, State of Montana, Seal." Said seal shall be used upon all bonds and mortgages, and such other instruments and documents as the commissioner may designate.

County Treasurer as Representative of Department.

Section 3. The county treasurer in each county of the state is hereby designated as the local representative of the Department of Farm Loans in the respective counties, and said services shall be performed without extra compensation, under the direction of the commissioner.

Applications for Loans—Loans on Acreage Only.

Section 4. The department shall receive application for farm loans through the county treasurer, or other agencies in each county, said applications to be made upon suitable blanks furnished by the department. The commissioner shall require proof of value of lands offered as security, including an appraisal of three disinterested taxpayers or public officials, and shall take the necessary steps to verify the facts set forth in said applications, and only those applications shall be approved which show good title; and no application for a loan shall be approved for more than one-half of

the value of the security, on a productive basis, as determined by the commissioner. Loans shall be made only on acreage property outside of incorporated towns and cities, and preference shall be given to those applications in which the applicant resides upon the land offered as security, and uses the same for productive purposes. No application shall be approved unless the commissioner is satisfied that the applicant will be able to meet the payments required to extinguish the loan with interest.

Information to Applicant—Examination of Security.

Section 5. The commissioner shall, on the demand of any applicant for a loan, furnish such applicant with complete information concerning all property offered as security for any series of bonds, and any five or more applicants for loans under such series of bonds may examine the several pieces of property offered as security, such examination to be made either in person or by a committee; and if any three applicants shall file with the commissioner an objection in writing to the sufficiency of any security offered, the property to which such objection is made shall not be accepted by the commissioner as security for any greater sum than one-half of the value fixed by the persons making such objection.

Issuance of Bonds by Commissioner—Mortgages.

Section 6. Whenever the commissioner has approved applications for loans amounting to one hundred thousand dollars in the aggregate, he shall proceed to issue negotiable bonds for a like amount, which bonds shall be secured by first mortgage upon the several pieces of property described in the approved applications; but if any applicant fail to execute the mortgage as required, or fail in any other respect, the commissioner may award the loan to other applicants. Each issue of bonds shall as far as practicable be secured upon lands in contiguous or adjoining territory.

The Commissioner of Farm Loans shall be named as the mortgagee in trust in the instruments securing said bonds; and to secure the advantages of combined credit, each piece of property shall be pledged to secure all of the bonds in the particular issue, with a provision that in case of default by any one of the mortgagors, the property pledged by such mortgagor shall be sold for the benefit of the mortgagee, and if the sum realized is less than the amount for which the property shall have been pledged, with interest, each piece of the remaining property shall be liable for its proportionate share of such deficit. The commissioner shall insert in each mortgage all proper safeguards for the preservation of the property pledged as security, and such matter contained in any mortgage shall not affect the negotiable character of the bonds secured by such mortgage.

Issuance of Series of Bonds on Petition of Owners in District.

Section 7. Whenever the owners of land in any district present a petition to the commissioner, signed by such owners requesting that a series of bonds amounting in the aggregate to less than one hundred thousand dollars (\$1,00,000) be issued, and the lands offered as security meet the requirements of this act, the commissioner may issue said series of bonds in any amount not exceeding in the aggregate one-half the total value of the land (as determined by the commissioner) offered as security, and such bonds may bear any rate of interest agreed upon by all of the owners whose lands are to be subject to such bond issue. Payments on any such issue of bonds for administrative purposes shall be the same per thousand

as the payments for administrative purposes on all other issues. The commissioner may require the owners of the lands offered as security for any issue of bonds as provided in this section to meet the preliminary expense of such issue, such advance payment of expense to be returned to such owners from the administrative fund as soon as the bonds have been sold. The payments upon the principal and interest of any such issue shall be made upon the amortization plan, as provided in this act.

Denominations and Numbers of Bonds—Interest—Payment.

Section 8. Each issue of bonds shall be given a serial number, and said bonds shall be issued in denominations of five hundred dollars each; but each bond may be divided into fractional units of fifty dollars or multiples thereof, with proper interest coupons attached. Said bonds, except as provided in the next preceding section, shall bear interest at the rate of five per cent per annum payable semi-annually and the bonds of each series shall be so arranged that one or more of them shall fall due at each interest paying date; the number of bonds falling due on each interest paying date being determined by the amount available for paying the same on each date, according to the amortization plan of fixed payments being made on such series of bonds. The commissioner may require the county treasurer in each county to collect all payments due from borrowers in such county, and such collections shall be made in the same manner that county taxes are collected, and in case of default the same penalties shall be collected as are collected in case of default in the payment of taxes.

Certificates and Coupon—Form.

Section 9. Each bond certificate, or fractional issue thereof, shall have printed upon its face the following words: "First Mortgage Farm Loan Savings Bond," and each certificate shall have printed upon it a statement to the effect that the principal and interest will be paid at maturity by the Commissioner of Farm Loans of the State of Montana, out of funds provided under this act for said purpose. Each bond certificate shall have proper interest coupons attached and may also have printed upon its face any other matter deemed essential by the Commissioner of Farm Loans.

Recording of Mortgages Without Fees.

Section 10. The mortgage on each piece of property accepted as security for any issue of bonds shall be recorded in the county wherein the property is situated, and such mortgage shall be recorded free of charge by the county clerk and recorder of each county.

Exemption from Taxation.

Section 11. Mortgages given to the Commissioner of Farm Loans shall not be assessed for purposes of taxation, but nothing in this act shall be construed as exempting from taxation the bonds issued under this act and owned by individuals or corporations within the state of Montana.

Interest and Payment Thereof.

Section 12. Each mortgage given to secure an issue of bonds, except as provided in section six, shall provide for semi-annual payments of four per cent of the total amount of the mortgage, and the funds derived from

such payments shall be applied as follows: One-eighth of the amount paid shall be put in a fund to pay administrative costs, including salaries, advertising, and all other expenses. The balance of the semi-annual payments shall be used to pay the principal and interest on said bonds, and the bonds shall be arranged to fall due so as to absorb as nearly as possible the balance on hand at each interest paying date.

Reduction of Payments.

Section 13. The commissioner may in his discretion, reduce the payments to the administrative fund, but the payments amounting to seven per cent per annum for the payment of principal and interest of any series of bonds, shall never be reduced or diminished until all of said series of bonds have been paid.

Subscription to and Issuance of Bonds—Distribution of Proceeds.

Section 14. When the commissioner is ready to receive subscriptions for bonds, he shall publish a notice in each county of the state, and in cities of other states, giving the essential facts and designating the persons who will receive subscriptions; and when subscriptions amounting in the aggregate to one hundred thousand dollars or more have been received and approved, the commissioner shall issue the bonds and shall pay the proper amounts to the respective persons furnishing the security for said bonds. When the money is to be used to pay a prior mortgage, it shall be paid to the mortgagee upon the release of the prior mortgage.

Subscriptions upon Payment of Ten Per Cent.

Section 15. The commissioner may, in his discretion, accept subscriptions for bonds upon a payment of ten per cent of the amount of each subscription, the balance to be paid when bonds are delivered; and if the subscriber fail to accept the bonds and pay for the same, the payment of ten per cent shall be forfeited and shall go to the administrative fund.

Cancellation of Paid Bonds—Satisfaction of Mortgage.

Section 16. All bond certificates and interest coupons that have been paid shall be canceled and filed by the commissioner in his office; and, when all of any series of bonds have been paid, the commissioner shall file a satisfaction of each mortgage given to secure such bonds.

Record to be Kept by Commissioner.

Section 17. The Commissioner of Farm Loans shall keep a complete record in his office, which shall show at all times the status of each bond issue, and shall show any balance that may be on hand to the credit of each issue.

Investment of Funds Belonging to Bond Issue.

Section 18. The commissioner may invest the funds on hand belonging to any issue of bonds, in bonds of another issue, selecting for such investment bonds that fall due prior to the date or dates on which the money invested will be required to meet maturing bonds.

State Examiner to Audit Books of Commissioner.

Section 19. The State Examiner shall audit the accounts and books of the Commissioner of Farm Loans semi-annually, and shall file his report on such audit with the State Board of Examiners.

Deposit of Funds—Interest and Premiums.

Section 20. Funds in the hands of the commissioner shall be deposited in the same manner as state funds, and all interest received on balances shall be placed to the credit of the fund to pay administrative costs; and all premiums, forfeitures, and other special payments received shall be placed in said administrative fund.

Lost or Destroyed Certificates.

Section 21. When bond certificates are lost or destroyed, duplicates of the same may be issued under safeguards fixed by the commissioner.

Maturity of Semi-annual Payments.

Section 22. The semi-annual payments required of mortgagors shall fall due one month prior to the interest paying dates on the respective issues of bonds, and if any mortgagor shall fail to meet any payment, the commissioner shall make good such payment on the interest paying date and shall proceed to reimburse the guarantee fund from which such deficiency is supplied, as hereinafter provided.

Guarantee Fund.

Section 23. The commissioner shall maintain a guarantee fund as hereinafter provided, from which any payments in default shall be supplied, and such fund may be used for other temporary uses with the approval of the State Examiner.

Collection of Default Payments—Foreclosure.

Section 24. Whenever the commissioner has made any default payment from the guarantee fund, he shall proceed within six months to collect the same from the mortgagor in default, and in selling the interest of such mortgagor the purchaser of such interest may be substituted for the original mortgagor in all subsequent payments. Any such foreclosure sale shall be made in the regular manner, subject to the right of redemption by the mortgagor, and any surplus realized above the payments and costs shall go to the original mortgagor.

Return of Default Payments to Guarantee Fund—Increasing Payment.

Section 25. As soon as any defaulted payments have been collected the same shall be returned to the guarantee fund, and if there is any net loss the same shall be paid pro rata by the other mortgagors in the particular series of bonds in which the default shall have occurred. The commissioner shall increase the regular payments due from such mortgagors to meet such loss, and any such increase in payments shall become a lien under the original mortgage.

Bonds Payable at Office of Commissioner—Liability of State.

Section 26. All bonds issued under the provisions of this act shall be made payable at the office of the Commissioner of Farm Loans; but the state of Montana shall not be liable for the payment of either principal or interest of any of said bonds.

Deposits With County Treasurer for Purchase of Bonds.

Section 27. To facilitate the investment of savings in the bonds issued under this act, the county treasurer in each county shall under the direction of the Commissioner of Farm Loans, accept deposits for the pur-

chase of such bonds in fractional denominations of fifty dollars or multiples thereof. The county treasurer shall issue receipts provided by the Commissioner of Farm Loans for such deposits, and the bonds shall be delivered in the order in which such receipts are issued.

Payment by County Treasurer of Bond or Coupon.

Section 28. The county treasurer of each county in the state is hereby authorized to pay out of any county funds available any bond certificate or coupon issued under this act when due, and transmit the same to the office of the commissioner for payment, and such certificate or coupon shall be counted as a cash asset while in the hands of such county treasurer.

Issuance by Treasurer of Receipts for Delivery of Bonds.

Section 29. In paying bonds or interest coupons under this act, the county treasurer may issue, in lieu of cash, receipts for the delivery of bonds of other issues, and the same shall be delivered in the order in which such receipts are issued.

Purchase of Bonds at Par and Delivery to Holder of Receipt.

Section 30. Whenever there are outstanding receipts for bond certificates to be delivered, the commissioner or any county treasurer may accept at par any bond certificate from any holder wishing to sell the same, and such bond certificate shall be delivered to one of the parties holding a receipt for money deposited for the purchase of such certificates. In the purchase of such certificates, however, no allowance shall be made for any interest coupon not yet fully matured.

Payment in Full of Loan by Mortgagor—Premium.

Section 31. Whenever any mortgagor wishes to pay off his loan in full, he shall be permitted to do so if the commissioner has applications on file for approved loans of equal amount, and the property of the applicant shall be substituted as security for the payment of bonds, and the mortgage against the property of the original mortgagor shall be discharged. The amount to be paid by such mortgagor shall be his proportionate share of the principal of the bonds outstanding, plus a small premium to be fixed by the commissioner. Such premium shall be placed in the administrative fund and the principal shall be paid to the party furnishing the new security.

Duties of Attorney General and County Attorneys.

Section 32. The Attorney General of the state shall act as legal adviser to the Commissioner of Farm Loans, and the county attorney in each county of the state shall take any legal steps required by the commissioner without extra compensation.

Appropriation—Expenditures.

Section 33. There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of twenty-five thousand dollars to be used as follows: Five thousand dollars shall be placed in the administrative fund of the department of farm loans and twenty thousand dollars shall be placed in the guarantee fund of said department. No expenditures shall be made except for the payment of salaries and the redemption of bonds until the same have been approved by the State Board of Examiners.

Section 34. All acts and parts of acts in conflict herewith are hereby repealed.

Section 35. This act shall be in force from and after its approval by the Governor.

Approved February 25, 1915.

SEED GRAIN BONDS OR WARRANTS.

Chapter 13, Laws 1915, page 15.

"An act authorizing counties to issue bonds or warrants to procure seed grain for needy farmers resident therein; providing for advertising and receiving bids for the purchase of said bonds; providing for the depositing of the money realized from the sale of such bonds; providing for the creation of a sinking fund for the purpose of purchasing seed grain; providing for the distribution of said seed grain among the needy farmers; providing for the levying of a tax and lien against the property of the person to whom said grain has been distributed, and for the security to the county of the payment by said person of the tax and lien against said property; providing penalties for the violation of said act."

Be it enacted by the Legislative Assembly of the State of Montana:

Counties Where Applicable—Petition to County Commissioners—Amount and Denomination of Bonds.

Section 1. In any county of the state where the crops for the preceding year have been a total or partial failure by reason of drought, or other cause, it shall be lawful for the Board of County Commissioners of such county to issue the bonds of the county under and pursuant to the provisions of this act, and with the proceeds derived from the sale thereof, to purchase seed wheat for the inhabitants thereof who are in need of seed grain and are unable to procure the same; whenever said board shall be petitioned in writing to do so, by not less than one hundred freeholders resident in the county; and said board at a meeting called as hereinafter provided to consider said petition, shall by a majority vote determine whether the prayer of the petitioners shall be granted or not; provided, that all such petitions shall be filed with the county auditor, or county clerk, on or before the first day of April; and thereupon it shall be the duty of said officer to forthwith call a meeting of the Board of County Commissioners of his county to consider said petitions; and provided, further, that the total amount of bonds issued by any county under the provisions of this act shall not, with the then existing indebtedness of the county, exceed the limit of indebtedness fixed by the Constitution in such case; that said bonds shall be in denomination of five hundred dollars; shall bear a rate of interest not exceeding six per cent per annum, payable semi-annually at such place and times as shall be determined by the board, and that all bonds issued under the provisions of this act shall become due and payable in not less than two nor more than five years from the date thereof, the date of maturity to be fixed by the county board at the time of the issuance thereof, with the above limitation.

Signature to Bonds—Certificate.

Section 2. Such bonds shall be signed by the chairman of the Board of County Commissioners and be attested by the county auditor, or county

clerk, as the case may be, who shall affix the seal of the county thereto and shall have indorsed thereon a certificate signed by the county auditor or county clerk, stating that said bonds are issued pursuant to law and are within the debt limit.

Sealed Proposals for Purchase—Notices—Sale to Highest Bidder.

Section 3. It shall be the duty of said board to receive sealed proposals for the purchase of said bonds after giving notice for ten days in three newspapers of general daily circulation, published as follows: One in the city of St. Paul, in the state of Minnesota; one in the city of Helena, in the state of Montana; and one in the county where the bonds are to be issued, if there be one published in such county, if not, then publication may be made in a weekly newspaper published in said county, if there be one so published, and said bonds shall be sold to the highest bidder for cash; provided, the same shall not be sold for less than their par value; and provided, further, that the said board may reject all bids and postpone the sale of said bonds for a time not exceeding fifteen days.

Proceeds to be Paid to County Treasurer.

Section 4. The proceeds arising from the sale of said bonds shall be paid by the purchaser thereof to the county treasurer of the county, or to his authorized agent at the time of the delivery thereof, and such proceeds shall be paid out only on the order of the Board of County Commissioners.

Additional Bond by Treasurer.

Section 5. The said board may, in its discretion, require the county treasurer to give an additional bond with sureties to be approved by the board, in a sum to be determined by said board, before the proceeds of said bonds are paid into the treasury.

Tax Levy to Pay Bonds—Deposit or Registration of Bonds—Warrants.

Section 6. For the purpose of securing prompt payment of the principal and interest, of said bonds, there shall be levied by the Board of County Commissioners at the time and in the manner other taxes are levied, such sums as shall be sufficient to pay such interest, and in addition thereto, a sinking fund tax shall be annually levied sufficient to pay and retire said bonds at their maturity, and it shall be the duty of the county treasurer to pay promptly the interest upon said bonds as the same shall fall due. No tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose; provided, however, that the Board of County Commissioners may direct the county treasurer to deposit any part or portion of the sinking fund herein provided for, in any bank furnishing satisfactory security to the state of Montana, to be approved by the board, and receive interest on the same, which shall be credited to said sinking fund. Before the bonds are delivered to the purchaser the treasurer of the county shall register them in a book to be provided for that purpose, known as the bond register, in which register he shall enter the number of each bond, its date, date of maturity, amount, rate of interest, to whom, and where payable. It shall be the duty of the treasurer when said bonds or any coupons attached thereto are paid, to cancel the same by writing upon the face thereof the word "Paid" and the date of payment. The Board of County Commissioners may issue war-

rants instead of bonds, if in their judgment the best interests of the county are thereby served; provided, that such warrants shall not be issued in any single amount to exceed three thousand dollars.

Disposition of Fund Arising from Sale—Limit of Amount of Grain to One Person.

Section 7. The fund arising from the sale of said bonds or warrants shall be applied exclusively by the said board for the purchase of seed grain for residents of the county who are unable to procure the same, provided, that not more than one hundred bushels of wheat or its equivalent in other grain shall be furnished to any one person.

Drawing Warrants on General Fund.

Section 8. In providing for the purchase of seed grain the commissioners may in lieu of issuing bonds, order warrants drawn upon the general fund of the county to pay for the seed grain purchased under the general provisions of this act.

Filing of Application for Seed Grain.

Section 9. All persons entitled to, and wishing to avail themselves of the benefit of this act, shall file with the county auditor, or county clerk, of the county where said applicant resides, on or before the first day of April, an application duly sworn to before said county auditor, or county clerk, or some other officer authorized to administer oaths. Said application shall contain a true statement of the number of acres the applicant has plowed, or has prepared for seeding; how many acres the applicant intends to have plowed or prepared for seeding; how many bushels and what kind of grain he will require to seed the ground so prepared as aforesaid; how many bushels of grain the applicant harvested in the preceding year; that the applicant has not procured and is not able to procure the necessary seed grain for the current year; that he desires the same for seed and no other purpose, and that he will not sell or dispose of the same or any part thereof, but will use the same and the whole thereof in seeding the land so prepared or to be prepared for crop. Said application shall also contain a true and full description of all the real and personal property owned by the applicant, and the encumbrances thereon; and a true description by government subdivisions of the land upon which the applicant intends to sow said seed grain. All applications filed under the provisions of this act shall be consecutively numbered and shall be open to public inspection, and no application shall be considered by the Board of County Commissioners except such as have been made and filed in the manner prescribed in this section; provided, that the Board of Commissioners may in their discretion consider any application although made after the time so specified.

County Commissioners as Board of Examination and Adjustment.

Section 10. The Board of County Commissioners of each county issuing bonds or warrants under the provisions of this act are hereby appointed and constituted a board of examination and adjustment of the applications for seed grain filed under the preceding section, and it shall be the duty of said board to meet at the county auditor or clerk's office on the first Tuesday in March, or as soon thereafter as possible, to examine and consider separately each application filed under the provisions of this act,

and to determine who are entitled to the benefits thereof, and the amount to which each applicant is entitled, and said board shall on or before the tenth day of April, deliver and file with the county auditor, or county clerk, its adjustment of the said applications which shall be signed by the chairman of the board.

Orders for Seed—Contracts—Tax Lists.

Section 11. The county auditor, or county clerk of each county shall, as soon as the county commissioners shall have performed the duty prescribed in the preceding section, issue to each applicant demanding it, an order for the number of bushels of each kind of seed grain which has been allowed to said applicant, unless otherwise directed by the board or the chairman thereof; provided, however, that said order shall not be delivered until said applicant shall have signed a contract in duplicate, attested by the county auditor or county clerk, to the effect that said applicant for and in consideration of . . . bushels of seed grain received from . . . county, promises to pay to said county . . . dollars, the amount of the cost of said seed grain; that said sum shall be taxable against all of the real and personal property of said applicant; that such tax shall be levied by the county auditor or county clerk, of his county and collected as other taxes are collected under the laws of this state; that the amount of such indebtedness shall become due and payable on the first day of October in the year in which said seed grain is furnished together with interest on such amount from the first day of April of that year, at the rate of six per cent per annum, and if said indebtedness be not paid on or before the twentieth day of October of that year, it shall then be the duty of the county auditor, or county clerk, of the said county, to cause the amount of said indebtedness to be entered upon the tax lists of said county for that year, as a tax on the land on which said wheat was sown, and upon any other land owned by the applicant, to be collected as other taxes are, and the sum so entered and levied shall be a lien upon the real estate owned by said person until said indebtedness is fully paid, when it shall be the duty of the proper officer to cancel the same.

Lien of County upon Crops.

Section 12. Upon the filing of the contracts provided for in section 10, the county shall acquire a just and valid lien upon the crops of grain raised each year by a person receiving seed grain to the amount of the sum then due to the county upon said contract, as against all creditors, purchasers or mortgagees, whether in good faith or otherwise, and the filing of said contract shall be held and considered to be full and sufficient notice to all parties of the existence and extent of said lien, which shall continue in force until the amount covered by said contract is fully paid.

Duty to Market Crop and Make Payment.

Section 13. Each and every person who has received seed grain under the provisions of this act, shall, as soon as his crops for the year wherein payment is to be made, are harvested and threshed, market a sufficient amount of grain to pay the amount then due on his contract and pay the same over to the treasurer of his county.

Disposal of Crop Contrary to Law—Penalties—Title to Grain.

Section 14. Any person or persons who shall, contrary to the provisions of this act, sell, transfer, take or carry away, or in any manner dis-

pose of the seed grain, or any part thereof, furnished by the county under this act, or shall use or dispose of said seed grain, or any part thereof, for any other purpose than that of planting or sowing the same as stated in his application, or shall sell, transfer, take or carry away, or in any manner dispose of the crop, or any part thereof, produced from the sowing or planting of said seed grain, shall be guilty of a misdemeanor, and upon the conviction thereof shall pay a fine of not less than ten dollars, nor more than one hundred dollars, or may be imprisoned in the county jail for a term of not more than ninety days, and shall pay all the costs of prosecution, and whoever under any of the provisions herein shall be found guilty of false swearing shall be deemed to have committed perjury and shall, upon conviction suffer the pains and penalties of that crime. Upon the filing of said application in the office of the clerk and recorder and the sowing of the seed obtained thereunder, the title and right of possession to the growing crop and to the grain produced from said seed shall be in the county which shall have furnished the seed until the debt incurred for said seed shall have been paid, and any seizure thereof or interference therewith, except by the applicant and those in his employ, for the purpose of harvesting, threshing and marketing the same to pay the debt aforesaid, shall be deemed a conversion thereof, and treble damages may be recovered against the person so converting the same by the county furnishing said seed.

Arrest and Prosecution for Violation of Law.

Section 15. It shall be the duty of the constables and the county commissioners, sheriffs and county attorneys of the several counties furnishing seed grain under the provisions of this act, having any knowledge of the violation of its provisions, to make complaint thereof to a justice of the peace, and said justice shall thereupon issue a warrant for the arrest of the offender, and proceed to hear and determine the matter, or to bind the offender over to appear before the district court as the case may be.

Distribution of Seed—Advertisement of Intention.

Section 16. The county commissioners of every county proposing to distribute seed grain under the provisions of this act shall advertise such intention in such manner and for such length of time prior to the first day of April as is possible for them to do, giving notice that all applications must be filed with the county auditor, or county clerk by the first day of April; provided, that no distribution of seed grain under the provisions of this act shall take place prior to the fifth day of April. If more seed grain is applied for than can be supplied by the commissioners under the provisions of this act, a pro rata distribution shall be made by them among those who shall have been found entitled to the benefits of this act. The commissioners shall have the right to refuse any application which they may deem improper to grant, and they may revise their adjustment of applications, at any time before final distribution.

Purchase of Grain by Commissioners for Seed and Furnishing to Applicants.

Section 17. It shall be the duty of the commissioners providing seed grain under the provisions of this act, to purchase the same at the lowest price at which suitable grain can be obtained, and to furnish the same to applicants at the actual cost thereof to the commissioners, with transportation and handling charges added, if any there be, and any person requiring

or exhorting [extorting] from any applicant a greater price shall be deemed guilty of a misdemeanor.

Disposition of Money Collected on Grain Contracts.

Section 18. All money received by the county treasurer in payment of debts incurred under the provisions of this act, shall be paid into, and become a part of the sinking fund herein provided for, and be used exclusively in the payment of expenses of publication and administration and in the purchase or payment of bonds or warrants issued hereunder.

Retirement of Bonds or Warrants.

Section 19. Said board may at any time, with the concurrence of the owners thereof, pay and retire any of the bonds or warrants issued under the provisions of this act out of the funds provided for that purpose, at not more than the par value thereof and accrued interest.

Tax Assessment—Amount—When Need not be Made.

Section 20. In case a sufficient fund has been paid into the county treasury in any one year, as provided in section 10 of this act, to meet the interest and sinking fund provided for in this act, then there shall be no tax assessed for such purpose in that year, and in no year shall there be a greater sum assessed than will, together with the balance at that date in the treasury belonging to the seed grain fund, be sufficient to meet said interest and sinking fund promptly for that year.

When Act Takes Effect.

Section 21. This act shall take effect and be in force from and after its passage and approval.

SALE OF AGRICULTURAL SEEDS.

Chapter 12, Laws 1913, page 10.

"An act to regulate the selling, offering or exposing for sale of agricultural seeds in this state, and providing penalties for the violation thereof."

Be it enacted by the Legislative Assembly of the State of Montana:

Definition of Agricultural Seeds.

Section 1. The term "agricultural seeds" or "agricultural seed" as used in this act shall include the seeds of red clover, white clover, alsike clover, alfalfa, Kentucky blue grass, timothy, brome grass, orchard grass, redtop, meadow fescue, oat grass, rye grass, and other grasses and forage plants, corn, flax, rape, wheat, oats, barley, rye, buckwheat and other cereals, and when the term "agricultural seed" or "agricultural seeds" is used in this act it shall be construed to mean such seed when sold, or offered or exposed for sale, or had in possession with intent to sell, within the state for the purposes of seeding in this state.

Duties of Person Holding Seed for Sale—Labels, etc.

Section 2. The owner or person in possession of each and every package, parcel or lot of agricultural seeds as defined in section one (1) of this act which contains one (1) pound or more of such agricultural seeds, whether in package or in bulk, shall affix thereto in a conspicuous place on the exterior of the container of such agricultural seeds, a written or printed

label in the English language in legible type or copy not smaller than eight point heavy Gothic caps, such label containing a statement specifying:

1st. The commonly accepted name of the kind or kinds of such agricultural seed and the true variety or strain of such seed in so far as such variety or strain is known.

2nd. The approximate percentage of germination of such agricultural seed together with the date of test of germination.

3rd. The approximate percentage by weight of each of the following seeds: Quack grass, fan weed or French weed, mustard, wild oats, and dodder if any such are found in such agricultural seed.

4th. The approximate percentage, by weight of all other foreign seeds combined in such agricultural seed.

5th. The approximate percentage by weight of sand, dirt, broken or shriveled seeds, sticks, chaff and other inert matter combined in such agricultural seeds.

6th. The county in which such seed was grown if grown in this state.

7th. The full name and address of the seedsmen, importer, dealer or agent or of other person or persons, firm or corporation selling, offering or exposing the said agricultural seed for sale.

Law not Applicable to What Seeds.

Section 3. The provisions concerning agricultural seed contained in this act shall not apply to:

1st. Any person selling agricultural seeds direct to merchants or farmers to be cleaned or graded before being offered for sale for the purpose of seeding and plainly marked on the outside of container "not clean seed."

2nd. Agricultural seed marked plainly on the outside of container, "Not Clean," and held or sold for export outside of the state only.

Penalty for Violation of Law.

Section 4. Any person, firm or corporation who sells, offers or exposes for sale or distribution in this state any agricultural seeds for seeding purposes without complying with the requirements of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars (\$10) and the costs of such prosecution, nor more than one hundred (\$100) dollars and the costs of such prosecution, and upon the second or any subsequent offense shall be fined not less than one hundred (\$100) dollars and the costs of prosecution, nor more than five hundred (\$500) dollars and the costs of such prosecution.

Inspection by Director of State Grain and Seed Laboratory.

Section 5. The director of the state grain and seed laboratory of the Montana Agricultural Experiment Station by himself, his agent or agents shall inspect, examine or make analyses of, and test seeds sold, offered or exposed for sale in the state at such time and place and to such an extent as he may determine. The said director of the state grain and seed laboratory of the Montana Agricultural Experiment Station, or by his agent or agents shall have free access at all reasonable hours upon and into any premises or structures to make examination of any seeds or any other premises of any warehouse, elevator or railway company, and upon tendering payment thereof, at the current value, may take any sample or samples of such seeds.

Employment of Agents by Director.

Section 6. The director of the state grain and seed laboratory under the direction of the director of the Montana Experiment Station may employ such agent or agents as may be deemed necessary to carry out the provisions of this act, and the salaries and expenses of such agents shall be paid out of moneys appropriated for the state grain and seed laboratory of the Montana Agricultural Experiment Station.

Sending Samples to Laboratory for Tests.

Section 7. Any citizen of the state of Montana in accordance with the regulations prescribed by the Montana Agricultural Experiment Station, and by prepaying the transportation charges, may send samples or a sample of seed to said grain laboratory of the Montana Agricultural Experiment Station for examination, analysis, and tests, and such examinations, analysis or tests shall be reported upon free of charge.

Certificate of Test Presumptive Evidence.

Section 8. The certificate of the Montana Agricultural Experiment Station giving results of any examinations, analysis or tests of any, seed samples made under the authority of said Montana Agricultural Experiment Station shall be presumptive evidence of the facts therein stated.

Duty of Experiment Station on Violations of Act.

Section 9. When said Montana Agricultural Experiment Station shall find by its examinations, analysis, or tests, that any person, firm or corporation has violated any of the provisions of this act, it shall transmit the fact so found to the Attorney General or to the county attorney of the county in which the offense is committed.

Prosecutions by Attorney General.

Section 10. It shall be the duty of the Attorney General and the county attorney to prosecute all persons violating any of the provisions of this act, when evidence thereof has been presented by the Montana Agricultural Experiment Station.

Section 11. All acts or parts of acts in conflict with this act are hereby repealed.

Section 12. This act shall take effect from January 1, 1914.

Approved February 10, 1913.

INSECTICIDES AND FUNGICIDES.

Chapter 26, Laws 1911, page 38.

An act for preventing the manufacture, sale or transportation of adulterated insecticides and fungicides, and for regulating traffic therein and fixing penalties for the violation of this act.

Be it enacted by the Legislative Assembly of the State of Montana:

Manufacture and Sale of Adulterated or Misbranded Paris Green, etc.

Section 1. It shall be unlawful for any person to manufacture within the state of Montana any insecticide, paris green, lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act.

Offering Such Articles for Shipment or Delivery.

Section 2. Any person who shall offer for shipment, or deliver from any point in the state of Montana to any other point in the state of Montana, any insecticide, or paris green, or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act; or any person who shall receive, or offer to receive, any insecticide, or paris green, or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act, and having received, shall sell or deliver, or shall offer for sale or delivery, such adulterated or misbranded insecticide, or paris green, or lead arsenate, or fungicide, shall be guilty of a violation of this act.

Definition of Adulterated.

Section 3. For the purpose of this act, an article shall be deemed to be "adulterated"—

In the case of paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxide (As_2O_5); third, if it contains arsenic in water soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide (As_2O_5); fourth, if any substances have been mixed and packed with it so as to reduce, lower or injuriously affect its quality or strength; provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled "lead arsenate and water," the percentage of water being plainly and correctly stated on the label.

In the case of insecticides or fungicides other than paris green and lead arsenate: First, if its strength or purity fall five per cent or more below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended to use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling or mitigating insects, shall be injurious to such vegetation when used.

Definition of "Misbranded."

Section 4. The term "misbranded" as used herein shall apply to insecticides, paris green, lead arsenate or fungicide, or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design or device regarding such article or the ingredients of the substances contained therein which shall be false or misleading in any particular.

Articles Deemed "Misbranded."

Section 5. For the purpose of this act, an article shall be deemed to be "misbranded"—

In the case of insecticides, paris green, lead arsenate and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have

been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and the contents are stated in terms of weight or measure, and they are not plainly and correctly stated on the outside of the package.

In the case of insecticides other than paris green and lead arsenates and fungicides: First, if they contain arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label; provided, however, that in lieu of naming and stating the percentage amount of each and every inert ingredient the producer may at his discretion state plainly upon the label the correct names and percentage amount of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present.

Duty of State Entomologist.

Section 6. It shall be the duty of the State Entomologist, upon the advice and under the direction of the director of the Experiment Station, to collect from time to time and deliver to the director of the Experiment Station specimens of insecticides, paris green, lead arsenates and fungicides in unbroken original packages, manufactured or offered for sale in the state of Montana, for the purpose of determining whether or not such insecticides, paris greens, lead arsenates and fungicides are adulterated or misbranded within the meaning of this act.

Submission of Packages to State Entomologist.

Section 7. When any citizen of the state has reason to believe that any particular brand or lot of insecticide or paris green, or lead arsenate, or a fungicide, is adulterated or misbranded within the meaning of this act, he may send or deliver to the State Entomologist an original and unbroken package of the article in question. Upon receipt of such a questionable article it shall be the duty of the State Entomologist to deliver it to the director of the Experiment Station, who shall examine or cause an investigation to be made and, at his discretion, may cause chemical examinations of such questioned articles as hereinafter provided.

Chemical Analysis by Director of Experiment Station.

Section 8. Upon the receipt of specimens of insecticides, paris greens, lead arsenates and fungicides in unbroken original packages, as hereinbefore provided, the director of the Experiment Station shall make, or cause to be made, a chemical analysis of such specimens for the purpose of determining whether or not they comply with the requirements of this act; provided, that when the director has information showing that samples delivered to him for examination are out of lots of insecticides, paris greens, lead arsenates or fungicides that have already been examined a sufficient number of times to indicate whether or not they comply with the requirements

of this act, then the director may refuse to examine such lots and so notify the State Entomologist or citizens of the state.

Definition of "Insecticide" and "Fungicide."

Section 9. The term "insecticide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects, mites or ticks which may infest vegetation, man or other animals, or households, or be present in any environment whatsoever. The term "paris green" as used in this act shall include the product sold in commerce as paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this act shall include the product or products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. The term "fungicide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever.

Dealers Subject to or Exempt from Prosecution.

Section 10. No dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the state of Montana from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it; said guaranty, to afford protection shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer under the provisions of this act.

Proceedings Against Substances in Course of Transportation.

Section 11. Any insecticides, paris green, lead arsenate or fungicide that is adulterated or misbranded within the meaning of this act and is being transported from one point within the state of Montana to another point within the state of Montana to be sold, wholly or in part, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or, if it be sold or offered for sale in the state of Montana, shall be liable to be proceeded against in any district court of the state of Montana. If any such article is condemned as being adulterated or misbranded within the meaning of this act, the same shall be disposed of by destruction or by sale, as the said court may direct; and the proceeds thereof, if sold, less the legal costs and charges, shall become a part of the expense fund as hereinafter provided; but such goods shall not be sold in any jurisdiction contrary to the provisions of this act or the laws of the jurisdiction; provided, however, that upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this act or the laws of this state, the court may by order direct that such articles be delivered to the owner thereof.

Certificate of Experiment Station that Article Conforms to Law.

Section 12. When any particular lot or brand of an insecticide, paris green, lead arsenate, or fungicide, manufactured in the state of Montana,

is found to comply with all the requirements of this act, the director of the Experiment Station shall have authority to issue certificate, and the person to whom such certificate is issued may use the same on packages of the article so certified, or in advertising matter concerning such articles; provided, however, that articles bearing such certificate shall be subject to re-examination, and if found to fail to comply with all of the requirements of this act, shall be proceeded against as in uncertified articles. Said director of the Experiment Station shall have authority to levy a fee of from five to fifty dollars for each and every certificate issued in compliance with this section, such fees to be placed in an expense fund as hereinafter provided.

Disposition of Fines—Expense Fund.

Section 13. One-half of all the fines which shall be levied for violations of this act, as hereinafter provided, shall be retained in the treasury of the Montana Agricultural Experiment Station, and these fines, together with the fees as provided for in section 12, shall constitute an expense fund from which the director shall pay the necessary and actual expenses incurred by the State Entomologist and the Experiment Station in carrying out the provisions of this act; provided, however, that whenever such fines and fees amount, at any one time, to more than one thousand dollars, the balance above this sum shall be turned into the state treasury.

Violation of Act a Misdemeanor.

Section 14. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty-five (\$25) dollars nor more than two hundred (\$200) dollars for the first offense, and upon conviction for each subsequent offense, be fined not less than fifty (\$50) dollars nor more than three hundred (\$300) dollars, or sentenced to imprisonment for not more than thirty days, in the discretion of the court.

Definition of "Person"—Corporations.

Section 15. The word "person" as used in this act shall be construed to include both the plural and the singular, as the case may be, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, company, society or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission or failure of such corporation, company, society or association, as well as that of the other person.

Section 16. All acts and parts of acts in conflict herewith are hereby repealed.

Section 17. This act shall take effect and be in force from and after its passage and approval.

REGULATION OF APPLE BOXES.

Chapter 113, Laws 1913, page 457.

"An act to create and establish a standard size apple box for the state of Montana; providing for the proper labeling and numbering of all apple boxes; and providing a penalty for the violation of this act."

Be it enacted by the Legislative Assembly of the State of Montana:

Standard Size of Apple Box.

Section 1. There is hereby created and established a standard size for apple boxes for the state of Montana. The standard size of an apple box shall be of the following dimensions, when measured without distention of its parts:—Depth of end, $10\frac{1}{2}$ inches; width of end $11\frac{1}{2}$ inches; length of box, 18 inches inside measurements; and representing as nearly as possible $2173\frac{1}{2}$ cubic inches.

Short Boxes to be Marked.

Section 2. That any box in which apples shall be packed and offered for sale that contains less than the required number of cubical inches, as prescribed in section 1 of this act, shall be plainly marked on one side and one end with the words "Short Box," or with the words or figures showing the practical relation which the actual capacity of the box bears to the capacity prescribed by section 1 of this act. The marking required by this paragraph shall be in black letters of the size of not less than 72-point block Gothic.

Grade, Number of Apples and Grower to be Marked on Box.

Section 3. That the box when packed and offered for sale shall bear upon it or upon the label, and in plain figures the approximate number of apples in the box, which shall be within five apples of the true count of the number of the style of pack used in the box; also in plain letters the name of the firm, company or organization who shall have first packed, or authorized the packing of the same. Also the name of the locality where the apples were grown; also the correct name of the variety of apples contained in the box; also the grade adopted by the grower, firm, company or organization that authorized the packing of the fruit.

Classification and Quality of Apples.

Section 4. That the apples contained within the box when so packed and offered for sale, shall be reasonably uniform in size, and free from worms, scale or fungus disease.

Box may be Marked "Standard."

Section 5. That the boxes in which the apples are packed in accordance with the provisions of this act may be marked "Standard."

Other Requirements in Packing Fruit.

Section 6. That boxes packed with apples and marked "Standard" shall be deemed to be misbranded within the meaning of this act:

First. If the size of the box does not conform to the requirements of section 1 of this act;

Second. If the markings on the box do not conform to the markings required by section 3 of this act;

Third. If the size and condition of the apples do not conform to the requirements of section 4 of this act;

Fourth. That the grade of apples contained in the box or boxes shall be as follows, to wit: Extra-Fancy, Fancy, "C," and "D" grade. The Extra-Fancy grade shall consist of sound, smooth, well formed apples free from all insect pests, disease blemishes and physical injury, and all apples in this grade must show natural color and be characteristic of the variety. The color of apples in this grade shall be for solid red variety at least seventy per cent of good red color; for striped variety the apples must have at least forty-five per cent of red color with yellow background; for red cheek or blush variety the apples must have a distinctly colored cheek or blush, and in this grade no boxes shall contain more than two hundred apples. The Fancy grade shall be composed only of apples having the same physical requirements as the Extra-Fancy, and be free from disease, blemishes, injury or defects as the Extra-Fancy, but may contain apples that are slightly limb rubbed or russeted. In solid red variety the Fancy grade must have at least thirty-five per cent of good natural color. Striped or partially red variety must have at least ten per cent of good red color; red cheek or blush variety must have correct physical qualities without requirements as to color and no box must contain more than two hundred and twenty-five apples. The "C" grade shall be made up of merchantable apples not included in the Extra Fancy and Fancy grades and must be free from insect pests, worm and physical injury, such as skin puncture, and must be free from rot. The requirements as to color shall be omitted in this grade, and no box shall contain more than two hundred and twenty-five apples. The "D" grade shall consist and be made up of apples clean and free from disease and insect pests, ungraded as to size and color, and all requirements as to size and number shall be omitted in this grade; provided, however, that all apples in this grade must be at least two inches in diameter. All other apples offered for sale within the state of Montana and not marked as Extra-Fancy, "Fancy," "C" or "D" grade shall be culls, and shall be plainly stamped and marked as culls. [Amendment approved March 2, 1915; Laws 1915, c. 57, p. 85.]

Cull Apples.

Section 7. All apples offered for sale in this state in any other manner than in the standard box provided for in this act, shall be marked and sold as cull apples.

Penalty for Violation of Law.

Section 8. That any person, firm, company or organization who shall knowingly pack, or cause to be packed, apples in boxes, or who shall knowingly sell or offer for sale such boxes, in violation of the provisions of this act, shall be guilty of a misdemeanor, and subject to a fine of not less than ten (\$10) dollars, nor more than fifty (\$50) dollars.

Editorial Notes.

Validity of legislation for prevention of fraud in weights and measures. Ann. Cas. 1912C, 251.

IMPROVEMENT OF LIVESTOCK.

Chapter 6, Laws 1913, page 5.

"An act to encourage the breeding and dissemination of better farm animals in the state of Montana, and providing penalties for violating any of its provisions."

Be it enacted by the Legislative Assembly of the State of Montana:

County Assessor to Collect Names of Owners of Pure Breeds of Stock.

Section 1. The county assessor in each county during the odd-numbered years shall in the regular routine of his duties, collect the names and addresses of all owners or breeders of pure bred horses, cattle, sheep, swine and poultry in the county, and in each case secure the name of the breed.

Delivery of Information to Experiment Station.

Section 2. On or before the first day of November the assessor shall compile the information secured, and deliver same to the director of the Montana Agricultural Experiment Station, located at Bozeman.

Official Books of Breed Association.

Section 3. Pure-bred animals are those recorded in the official books of the various breed associations. A list of these books shall be furnished to the assessor of each county by the director of the Montana Agricultural Experiment Station, and the assessor shall accept as pure breeds, only such breeds as are given in this list as shown by certificates of registration in the possession of the owner.

Publication of Owners of Pure Breeds—Bulletins.

Section 4. On or before the first day of January of the even-numbered years, the director of the Experiment Station shall prepare for publication and cause to be printed, a bulletin giving the names and addresses of all owners and breeders of pure bred livestock in the state of Montana, as reported the previous year by the county assessor. This bulletin shall be for free distribution in the state of Montana, and on request, to breeders and farmers outside the state.

Fraud in Registration of Animals.

Section 5. No person or persons, company or corporation shall sell to another person or persons, any animal with a certificate of registration or breeding that does not belong to said animal, nor change in any way the certificate of registration of breeding of any animal; nor shall any person change the markings of any animal with the intent to deceive the purchaser.

Penalty for Violation of Law.

Section 6. Any person or persons, company or corporation violating section 5 of this act shall be punished by a fine of not less than twenty-five (\$25) dollars, or more than five hundred (\$500) dollars, or by imprisonment of not less than ten (10) days or more than six (6) months, or by both fine and imprisonment.

Section 7. All acts and parts of acts in conflict with this act are hereby repealed.

Section 8. This act shall be in full force and effect from and after its passage and approval by the Governor.

Approved February 6, 1913.

SERVICE OF STALLIONS AND JACKS.

Chapter 108, Laws 1909, page 152.

"An act to regulate the public service of stallions and jacks in Montana."

Be it enacted by the Legislative Assembly of the State of Montana:

Enrollment or Registration of Stallion or Jack.

Section 1. Every person, firm or company, standing or using any stallion or jack for public service in this state shall cause the name, description and pedigree of such stallion or jack to be enrolled by a Stallion Registration Board, hereinafter provided for, and shall secure a license from said board as provided for in section 3 of this act. All enrollment and verification of pedigree shall be done by said board.

Stallion Registration Board.

Section 2. In order to carry out the provisions of this act, there shall be constituted a Stallion Registration Board, whose duty it shall be to verify and register pedigrees; to employ one or more competent graduate veterinarians to make examinations of the stallions for soundness, at one or more points in each county in the state; to pass upon certificates of veterinary examination; to issue stallion license certificate; to make all necessary rules and regulations; and to perform such other duties as may be necessary to carry out and enforce the provisions of this act. Said board shall hold an annual meeting at the College of Agriculture in Bozeman the first Tuesday of February and such other meetings as may be necessary.

Who Shall Compose Board.

Section 3. The Stallion Registration Board shall be composed of the president of the Montana Horse Breeders' Association, the state veterinarian, and the professor of animal husbandry at the Montana Experiment Station, who shall be secretary and executive officer of this board.

Certificate of Pedigree of Animal.

Section 4. In order to secure the license certificate herein provided for, the owner shall apply for such to the Stallion Registration Board, after the stallion or jack has been examined for soundness. The owner of such stallion or jack shall furnish to the Stallion Registration Board the veterinary certificate, and book registry certificate of pedigree of the stallion or jack and all other necessary papers relating to his breeding and ownership. Upon verification of pedigrees and certificate of breeding a stallion or jack certificate shall be issued to the owner.

Disqualifying Diseases.

Section 4a. The presence of any one or more of the following named diseases shall disqualify a stallion or jack for public service, except such stallions or jacks as were in public use, or held for sale for public use at the time of the enactment and passage of this act; such diseases or unsoundness hereby defined as infectious, contagious or transmissible diseases or unsoundness for the purpose of this act; cataract, amaurosis, laryngeal, hemiplegia, (roaring or whistling), chorea, (St. Vitus' dance, crampiness, shivering, springhalt), bone spavin ringbone, sidebone, glanders, farcy, maladie de coit, urethral gleet, mange, melanosis and curb when accompanied by curby hock.

The Stallion Registration Board is hereby authorized to refuse certificate of enrollment to any stallion or jack affected with any one of the diseases specified, and to revoke previously issued stallion license certificate of any stallion or jack found on examination to be so affected, except stallions or jacks in the state at the time of the enactment and passage of this act.

No stallion or jack shall stand for public service in the state of Montana which is deformed or so badly diseased as to be in the opinion of the Stallion Registration Board wholly unfit for breeding purposes, and said board are hereby authorized to refuse license certificate and registry for said animal.

Temporary Licenses.

Section 5. The Stallion Registration Board is authorized in cases of emergency to grant temporary license certificates without veterinary examination, upon the receipt of an affidavit of the owner to the effect that to the best of his knowledge and belief said horse or jack is free from infectious, contagious or transmissible diseases or unsoundness. Temporary license certificates shall be valid only until veterinary examination can reasonably be made.

Description of Diseases in Certificate.

Section 5a. Stallions or jacks in the state previous to the passage and enactment of this law shall have described in their license certificate any hereditary disease or unsoundness referred to in section 4 of this act.

Imported Animals—Certificate of Soundness.

Section 6. Every person, firm or company, importing any stallion or jack into the state of Montana, for breeding purposes, shall first secure a certificate from a recognized state or federal veterinary officer, certifying that said animal is free from any or all diseases or unsoundness referred to in section 4 of this act.

A copy of this certificate must be mailed to the secretary of the Stallion Registration Board, at the Montana Experimental Station, Bozeman, Montana, at least ten days before the importation of said stallion or jack into the state.

No stallion or jack which is neither pure bred nor grade according to the meaning of this act shall be imported into this state for breeding purposes.

Posting of Certificate.

Section 7. The owner of any stallion or jack standing for public service in this state shall post and keep affixed during the entire breeding season copies of the license certificates of such stallion or jack, issued under the provisions of this act, in a conspicuous place upon the main door leading into every stable or building where said stallion or jack stands for public service. Said copies shall be printed in bold face and conspicuous type, not smaller than small pica, especially the words "pure bred," "grade," etc.

Form of License Certificate.

Section 8. The license certificate issued after proper examination of a stallion or jack whose sire and dam are of pure breeding, and the pedigree certificate of which is registered in a stud book recognized by the Montana

Stallion Registration Board, and in the case of foreign pedigree certificate those which are registered in a stud book recognized by the United States Department of Agriculture, shall be in the following form:

Stallion Registration Board.

License Certificate of Pure-bred Stallion or Jack.

The pedigree of the stallion (name) owned by bred by described as follows color breed foaled in the year has been examined by the Stallion Registration Board of Montana, and it is hereby certified that the said stallion or jack is of pure breeding, is registered in a stud book recognized by said Stallion Registration Board.

The above-named stallion or jack has been examined by the veterinarians appointed by the Stallion Registration Board, and is reported as free from infectious, contagious or transmissible diseases or unsoundness (or is affected with) and is licensed to stand for public service in the state of Montana.

Signed

Secretary, Stallion Registration Board of Montana.

The license certificate issued after proper examination for a stallion or jack whose sire or dam, but not both, is of pure breeding, shall be in the following form:

Stallion Registration Board.

License Certificate of Grade Stallion or Jack.

The pedigree of the stallion (name) owned by bred by described as follows color breed foaled in the year has been examined by the Stallion Registration Board of Montana, and it is hereby certified that the said stallion or jack is not of pure breeding, and is therefore not eligible for registration in any stud book recognized by the Stallion Registration Board.

The above-named stallion or jack has been examined by the veterinarian appointed by the Stallion Registration Board, and is reported as free from infectious, contagious or transmissible diseases or unsoundness (or is affected with) and is licensed to stand for public service in the state of Montana.

Signed

Secretary, Stallion Registration Board of Montana.

[Amendment approved March 8, 1915; Laws 1915, c. 133, p. 290.]

Bills, Posters or Advertisements.

Section 9. Every bill, poster, or advertisement issued by the owner of any stallion or jack licensed under this act, or used by him for advertising such stallion or jack shall contain a copy of his license certificate and shall not contain illustrations, pedigrees or other matter that is untruthful or misleading.

Fees for Examination and License.

Section 10. A fee of ten dollars (\$10) shall be paid to the secretary of the Stallion Registration Board for the veterinary examination of stallions and jacks and enrollment of each pedigree and the issuance of a license certificate.

A fee not exceeding two dollars (\$2) shall be paid annually for the renewal of the license. Stallions or jacks shall be examined every four

years, until ten years of age, and after the first examination shall be exempt from examination at ten years of age and over. [Amendment approved March 8, 1915; Laws 1915, c. 133, p. 290.]

Transfer of License on Sale of Animal.

Section 11. Upon a transfer of the ownership of any stallion or jack licensed under the provisions of this act, the license certificate may be transferred by the secretary of this board to the transferee upon the submittal of satisfactory proof of such transfer of ownership and upon the payment of one dollar (\$1).

Penalty for Violation of Act.

Section 12. Any person or persons knowingly or willfully violating any of the provisions of this act shall be punished by a fine of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), or by imprisonment for not less than thirty days or more than six months, or by fine and imprisonment for each offense.

Funds Accruing from Fees.

Section 13. The funds accruing from the above-named fees shall be used by the Stallion Registration Board to defray the expenses of veterinary examination, of enrollment of pedigrees and issuance of licenses. Any funds not so used shall be used to publish reports or bulletins containing lists of stallions examined; to encourage the horse and mule breeding interests of this state; to disseminate information pertaining to horse breeding, and for any other such purposes as may be necessary to carry out the purposes and enforce the provisions of this act.

Annual Reports to Governor.

Section 14. It shall be the duty of this board to make annual report, including financial statements, to the Governor of the state, and all financial records of said board shall be subject to inspection at any time by the public examiner.

Law not Applicable to Range Animals.

Section 15. No part of this act shall apply to stallions turned upon the open range, and the term "Standing for Public Service," is hereby defined as the service of a stallion or jack for a fee when said stallion or jack is stood at one or more places for a public use. [Amendment approved March 8, 1915; Laws 1915, c. 133, p. 290.]

Transportation of Animals by Railroad.

Section 16. No railroad company, transportation company, or common carrier, shall transport into the state of Montana any stallion or jacks unless accompanied by a state or federal veterinary certificate as provided in section 6 of this act. Violation of this provision shall be punished as provided in section 12 of this act. [Amendment approved March 8, 1915; Laws 1915, c. 133, p. 290.]

Section 17. All acts and parts of acts in conflict with this act are hereby repealed.

Section 18. This act shall take effect from and after the date of its passage and approval.

Approved March 8, 1909.

FRATERNAL BENEFIT SOCIETIES.

Chapter 140, Laws 1911, page 403.

An act providing for the regulation and control of domestic foreign fraternal benefit societies, association and corporations in the state of Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Fraternal Benefit Societies Defined.

Section 1. Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with section 5 hereof, is hereby declared to be a fraternal benefit society.

Lodge System Defined.

Section 2. Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known, into which members shall be elected, initiated and admitted in accordance with its Constitution, laws, rules regulations, and prescribed ritualistic ceremonies which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system.

Representative Form of Government Defined.

Section 3. Any such society shall be deemed to have a representative form of government when it shall provide in its Constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its Constitution and laws; provided, that the elective members shall constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its Constitution and laws; and provided, further, that the meetings of the supreme or governing body, and the election of officers, representatives or delegates shall be held as often as once in four years. The members, officers, representatives or delegates of a fraternal benefit society shall not vote by proxy.

Exemptions.

Section 4. Except as herein provided, such societies shall be governed by this act and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein.

Benefits.

Section 5. Subsection 1. Every society transacting business under this act shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age; provided, the period of life at which the payment of benefits for disability on ac-

count of old age shall commence, shall not be under seventy years, and may provide for monuments or tombstones to the memory of its deceased members and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all of such portion of the face value of his certificate as the laws of the society may provide; provided, that nothing in this act contained shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life which are payable upon the death or disability of the member occurring with the term for which the benefit certificate may be issued. Such society, shall, upon written application of the member have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate with interest payable or compounded annually at a rate not lower than four per cent per annum; provided, that this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contributions and to contracts affected by such readjustment.

Subsection 2. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve necessary to enable it to do so, under a table of mortality not lower than the American Experience Table and four per cent interest, may grant to its members, extended and paid-up protection or such withdrawal equities as its Constitution and laws may provide; provided, that such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made.

Beneficiaries.

Section 6. The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree ascending or descending, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchildren, children by legal adoption, or to a person or persons dependent upon the member; provided, that if after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege with the consent of the society, to make such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and, from time to time, have the same changed in accordance with the laws, rules or regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member; provided, that any society may, by its laws, limit the scope of beneficiaries within the above classes.

Qualifications for Membership.

Section 7. Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician and whose examination has been supervised and approved in accordance with the laws of the society; provided, that any beneficiary member of such society who shall apply for a certificate providing for disability benefits, need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members.

Certificate.

Section 8. Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, of a voluntary association, the articles of association, the Constitution and laws of the society and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof and any changes, additions or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, Constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions and amendments had been made prior to and were in force at the time of the application for membership.

Funds.

Section 9. Subsection 1. Any society may create, maintain, invest, disburse, and apply an emergency, surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held invested, and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in subsection 2 of section 5 of this act. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and accretions of said funds; provided, that no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state, which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard with interest assumption not more than four per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent per annum.

Subsection 2. Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

Investments.

Section 10. Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies; provided, that any foreign society permitted or seeking to do business in this state, which invests its funds in accordance

with the laws of the state in which it is incorporated, shall be held to meet the requirements of this act for the investment of funds.

Distribution of Funds.

Section 11. Every provision of the laws of the society for payment by members of such society, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses.

Organization.

Section 12. Seven or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this act, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

1st. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or to lead to confusion.

2d. The purpose for which it is formed—which shall not include more liberal powers than are granted by this act, provided that any lawful, social, intellectual educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society—and the mode in which its corporate powers are to be exercised.

3d. The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body which election shall be held not later than one year from the date of the issuance of the permanent certificate.

Such articles of incorporation and duly certified copies of the Constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the commissioner of insurance, conditioned upon the return of the advanced payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the commissioner of insurance, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this act, and all provisions of law have been complied with, the commissioner of insurance shall so certify and retain the record (or file) the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the commissioner of insurance, said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its Constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. But no such society shall incur

any liability other than for such advanced payments, nor issue any certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society, not until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated, nor until there has been submitted to the commissioner of insurance, under oath of the president and secretary, or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions which shall be sufficient to provide for meeting the mortuary obligation, contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress August 23, 1899, or any higher standard at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent per annum, nor until it shall be shown to the commissioner of insurance by the sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected. Which payments in the aggregate shall amount to at least twenty-five hundred dollars, all of which shall be credited to the mortuary or disability fund on account of such applicants, and no part of which may be used for expenses.

Said advanced payments shall, during the period of organization, be held in trust, and, if the organization is not completed within one year as hereinafter provided, returned to said applicants.

The commissioner of insurance may make such examination and require such further information as he deems advisable, and upon presentation of satisfactory evidence that the society has complied with all the provisions of law he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The commissioner of insurance shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provisions of this section shall be valid after one year from its date, or after such further period, not exceeding one year, as may authorized by the commissioner of insurance, upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided, and the articles of incorporation and all proceeding thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commenced business as herein provided. When any domestic society shall have discon-

tinued business for the period of one year, or has less than four hundred members, its charter shall become null and void.

Every such society shall have the power to make a Constitution and by-laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to or amend such Constitution and by-laws and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

Powers Retained—Reincorporation—Amendments.

Section 13. Any society now engaged in transacting business in this state may exercise, after the passage of this act, all of the rights conferred thereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this act, if incorporated; or, if it be a voluntary association it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its Constitution and laws and all such amendments shall be filed with the commissioner of insurance and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, Constitution or laws.

Mergers and Transfers.

Section 14. No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the commissioner of insurance of this state, together with a sworn statement of the financial condition of each of said societies, by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of said societies.

Upon the submission of said contract, financial statements and certificates, the commissioner of insurance shall examine the same, and, if he shall find such financial statements to be correct and the said contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of said societies he shall approve said merger or transfer, issue his certificate to that effect and thereupon the said contract of merger or transfer shall be of full force and effect.

In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by the commissioner of insurance.

Annual License.

Section 15. Societies which are now authorized to transact business in this state may continue such business until the first day of April next succeeding the passage of this act, and the authority of such societies may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding April, provided, however, the license shall continue in full

force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the commissioner of insurance ten dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this act.

Admission of Foreign Society.

Section 16. No foreign society now transacting business, organized prior to the passage of this act, which is not now authorized to transact business in this state, shall transact any business herein without a license from the commissioner of insurance. Any such society shall be entitled to a license to transact business within this state upon filing with the commissioner a duly certified copy of its charter or articles of association; a copy of its Constitution and laws, certified by its secretary or corresponding officer, a power of attorney to the commissioner as hereinafter provided; a statement of its business under oath of its president and secretary or corresponding officers, in the form required by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the commissioner of insurance of this state; a certificate from the proper official in its home state, province or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical, or other payments by, persons holding similar contracts, and upon furnishing the commissioner such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, he shall issue a license to such society to do business in this state until the first day of the succeeding April, and such license shall upon compliance with the provisions of this act, be renewed annually, but in all cases to terminate on the first day of the succeeding April, provided, however, that license shall continue in full force and effect until the new license be issued or specifically refused.

Any foreign society desiring admission to this state shall have the qualifications required of domestic societies organized under this act and have its assets invested as required by the laws of this state, territory, district, country, or province where it is organized. For each such license or renewal the society shall pay the commissioner ten dollars. When the commissioner refuses to license any society, or revokes its authority to do business in this state, he shall reduce his ruling, order or decision to writing, and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of the commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within the state; provided, however, that nothing contained in this or the preceding section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein.

Power of Attorney and Service of Process.

Section 17. Every society, whether domestic or foreign, now transacting business in this state shall, within thirty days after the passage of this act, and every such society hereafter applying for admission, shall,

before being licensed, appoint in writing the commissioner of insurance and his successors in office to be its true and lawful attorney, upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by said commissioner of insurance, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon the commissioner of insurance or in his absence upon the person in charge of his office and shall be deemed sufficient service upon such society; provided, however, that no such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading [pleading] or defense in less than thirty days from the date mailing the copy of such service to such society. When legal process against any such society is served upon said commissioner of insurance he shall forthwith forward by registered mail one of the duplicate copies prepared and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein.

Place of Meeting—Location of Office.

Section 18. Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state. But its principal office shall be located in this state.

No Personal Liability.

Section 19. Officers and members of the supreme, grand or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society, but the same shall be payable only out of the funds of such society and in the manner provided by its laws.

Waiver of the Provisions of the Laws.

Section 20. The Constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and Constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members.

Benefits not Attachable.

Section 21. No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment or other process, or be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay

any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment.

Constitution and Laws—Amendment.

Section 22. Every society transacting business under this act shall file with the commissioner of insurance a duly certified copy of all amendments of or additions to its Constitution and laws within ninety days after the enactment of the same. Printed copies of the Constitution and laws as amended, changed or added to, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof.

Annual Reports.

Section 23. Every society transacting business in this state shall annually, on or before the first day of March file with the commissioner of insurance, in such form as he may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transaction for the year ending on that date and also shall furnish such other information as the commissioner may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement he may deem necessary to be made relating to such society.

In addition of the annual report herein required each society shall annually report to the commissioner a valuation of its certificates in force on December 31st, last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses, provided the first report of valuation shall be made as of December 31, 1912. Such report of valuation shall show, as contingent liabilities, the present mid-year value of the promised benefits provided in the Constitution and laws of such society under certificates then subject to valuation; and, as contingent assets, the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

Such valuation shall be certified by a competent accountant or actuary, or at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress August 23, 1899, or at the option of the society, any higher table, or, at its option, it may use a table based upon the society's own experience of at least twenty years and covering not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the

valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experience and in such a case a separation of the funds shall not be required.

The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities.

Beginning with the year 1914 a report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June 1st of each year, or in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency, and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum.

Provisions to Insure Future Security.

Section 23a. If the valuation of the certificates as hereinbefore provided, on December 31, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than ninety per centum of the present value of the promised benefits and accrued liabilities, such society shall be required thereafter to reduce such deficiency not more than five per centum of the total deficiency on said December 31, 1917, at each succeeding triennial valuation. If at any succeeding triennial valuation such society does not show such percentage of improvement, the commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has not made the percentage of improvement required therein, the commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, in accordance with the provision of section 24 of this act, or, in the case of a foreign society, he may cancel its license to transact business in this state.

Any such society, shown by any triennial valuation, subsequent to December 31, 1917, not to have made the improvement herein required shall, within one year thereafter, complete such deficient improvement, or thereafter, as to all new members admitted, be subject, so far as stated rates of contribution are concerned, to the provisions of section 12 of this act, applicable in the organization of new societies; provided, that the contributions and funds of such new members shall be kept separate and apart from the other funds of the society until the required improvement shall be shown by valuation. If such required improvement is not shown by the succeeding triennial valuation, then the said new members may be placed

in a separate class and their certificates valued as an independent society in respect of contributions and funds.

Examination of Domestic Societies.

Section 24. The commissioner of insurance, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society and may summon and qualify as witness under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society.

The expense of such examination shall be paid by the society examined, upon statement furnished by the commissioner of insurance, and the examination shall be made at least once in three years.

Whenever after examination the commissioner of insurance is satisfied that any domestic society has failed to comply with any provisions of this act, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently, or whenever any domestic society, after the existence of any one year or more, shall have a membership of less than four hundred, (or shall determine to discontinue business), the commissioner of insurance may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society, and shall proceed at once to take possession of the books, papers, moneys and other assets of the society and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto.

No such proceedings shall be commenced by the Attorney General against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced.

Application for Receiver, etc.

Section 25. No application for injunction against or proceedings for the dissolution of, or the appointment of a receiver for any such domestic society or branch thereof, shall be entertained by any court in this state unless the same is made by the Attorney General.

Examination of Foreign Societies.

Section 26. The commissioner of insurance or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The said commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and condition of the society. He may, in his dis-

cretion, accept in lieu of such examination, the examination of the Insurance Department of the state, territory, district, province or county where such society is organized. The actual expenses of examiners making any such examination shall be paid by the society upon statement furnished by the commissioner of insurance.

If any such society or its officers refuse to submit to such examination or to comply with the provisions of the section relative thereto, the authority of such society to write new business in this state shall be suspended or license refused until satisfactory evidence is furnished the commissioner relating to the condition and affairs of the society, and during such suspension the society shall not write new business in this state.

No Adverse Publication.

Section 27. Pending during or after an examination or investigation of any such society, either domestic or foreign, the commissioner of insurance shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding, affecting the status, standing or rights of any such society, until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

Revocation of License.

Section 28. When the commissioner of insurance on investigation is satisfied that any foreign society transacting business under this act has exceeded its powers, or has failed to comply with any provision of this act, or is conducting business fraudulently, or is not carrying out its contracts in good faith he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If on the date named in said notice such objections have not been removed to the satisfaction of the said commissioner, or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of the society to continue business in this state. All decisions and findings of the commissioner made under the provisions of this section may be reviewed by proper proceedings in any court of competent jurisdiction, as provided in section 16 of this act.

Exemption of Certain Societies.

Section 29. Nothing contained in this act shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the Insurance Department of the Supreme Lodge Knights of Pythias), and the Junior Order of United American Mechanics (exclusive of the Beneficiary Degree or insurance branch of the National Council Junior Order United American Mechanics) or societies which limit their membership to any one hazardous occupation, nor to similar societies which do not issue insurance certificates, nor to an association of local lodges of a society now doing business in this state which provides death benefits not to exceed three hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan

in this state, nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year; provided, always, that any such domestic order or society which has more than five hundred members, and provides for death or disability benefits and any such domestic lodge, order or society which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all the requirements of this act. The commissioner of insurance may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this act.

No society, which is exempt by the provisions of this section from the requirement of this act shall give or allow to promise to give or allow, to any person any compensation for procuring new members.

Any fraternal benefit society, heretofore organized and incorporated and operating within the definition set forth in section 1, 2 and 3 of this act, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this act, and shall have all the privileges and shall be subject to all the provisions and regulations of this act, except that the provisions of this act requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits, shall not apply to such society.

Taxation.

Section 30. Every fraternal benefit society organized or licensed under this act is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax, other than taxes on real estate and office equipment.

Penalties.

Section 31. Any person, officer, member or examining physician of any society authorized to do business under this act who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days, nor more than one year, or both, in the discretion of the court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such society for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall willfully make any false statement in any verified report or declaration under oath required or authorized by this act, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury.

Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided, to do business as herein defined in this state, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Any society, or any officer, agent or employee thereof neglecting or refusing to comply with, or violating any of the provisions of this act, the penalty for which neglect, refusal or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof.

Section 32. This act shall be in full force and effect on and after the first of April, 1911.

Section 33. All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 11, 1911.

Editorial Notes.

Mutual or membership insurance, features of law specially applicable to. 52 Am. St. Rep. 543.

Right to proceeds of benefit certificate where part of beneficiaries named are ineligible to take. Ann. Cas. 1912A, 214.

Necessity of notice to member of benefit society to pay dues or assessments

in order to render member delinquent. Ann. Cas. 1912D, 699.

Validity of amendments to by-laws of fraternal benefit societies as applied to existing members. Ann. Cas. 1913C, 675.

Right of member of benefit society to designate new beneficiary by will. Ann. Cas. 1913B, 1286.

CHILDREN'S HOME SOCIETY.

Chapter 133, Laws 1911, page 376.

"An act authorizing the Montana Children's Home Society to take from the Orphans' Home at Twin Bridges dependent children and place them in carefully selected homes for adoption and to provide compensation for the placing and caring for them."

Be it enacted by the Legislative Assembly of the State of Montana:

Authority of Montana Children's Home Society to Take Dependent Children from Twin Bridges.

Section 1. That the Montana Children's Home Society of Helena is hereby given authority to take from the Orphans' Home at Twin Bridges by and with the consent of the superintendent of said Home, dependent children for adoption in carefully selected homes.

Duty of Home Toward Children—Contract With State.

Section 2. That the Montana Children's Home Society shall place such children in good homes and shall have supervisory care over such children to the end that such children may be given good care and educational advantages, and shall by proper contract enter into with the state of Montana undertake to exercise proper supervision over the children so placed until they reach their majority, such contract to be filed and preserved at the Orphans' Home at Twin Bridges.

Record of Children.

Section 3. The Montana Children's Home Society shall keep a record of all children so placed and shall make a report to the Governor of all children intrusted to its care on the first day of December of each year.

Compensation to Society.

Section 4. The Montana Children's Home Society shall receive for each child so placed and cared for one hundred dollars as full compensation for such service.

Appropriation.

Section 5. There is hereby appropriated from the general fund the sum of five thousand dollars annually or so much as may be needed to carry out the provisions of this act.

Section 6. All acts and parts of acts in conflict herewith are hereby repealed.

Section 7. This act shall be in full force and effect on passage and approval.

Approved March 9, 1911.

BUILDING REGULATIONS.

Chapter 107, Laws 1909, page 151.

"An act providing for the temporary floors and safe scaffolding in buildings during the erection thereof, for the protection of the persons working thereon."

Be it enacted by the Legislative Assembly of the State of Montana:

Construction of Scaffolds.

Section 1. That all scaffolds erected in this state for the use in the erection, repair, alteration or removal of buildings, shall be well and safely supported, and sufficient width, and properly secured, so as to insure the safety of persons working thereon or passing thereunder, or by the same, and to prevent the falling thereof, or of any material that may be used, placed or deposited thereon.

Temporary Floors for Protection of Workmen.

Section 2. It shall be the duty of every owner, person or corporation who shall have the direct and immediate supervision or control of the construction or remodeling of any building having more than three framed floors, whether some or all of said floors are above or below the established street grade, to provide and lay upon the upper side of the joists or girders, or both, of the first floor below the riveters and structural steel setters, a plank floor, which shall be laid to form a good substantial temporary floor for the protection of employees and all persons engaged above or below or on such temporary floor in such building.

Provided, however, that where the permanent floor is in place on the floor herein required to be planked, a temporary protective floor, shall not be required.

If the floor or permanent floor of the second floor, or of any other floor above the second, or roof, is being placed previous to the permanent floor immediately below the floor which is being arched or planked, a good sub-

stantial temporary floor shall be laid on the joists and girders of the next lower floor. For the purpose of this section the lowest framed floor in the building shall be considered the first floor.

Planking Above Scaffolds.

Section 3. In buildings more than three stories high where persons are working on a scaffold or scaffolds on the outside of such buildings, such persons shall be protected by well-secured planking, set over the heads of such persons for the full width of the scaffolding on which they are working if another story or stories are being raised above such persons during the time they are working on such outside scaffold or scaffolding.

Guarding of Stairways, Elevator Openings, etc.

Section 4. It shall be the duty of all owners, contractors, builders, or persons having the direct and immediate control or supervision of any buildings in course of erection which shall be more than thirty feet high, to see that all stairways, elevator openings, flues and all other openings in the floors shall be covered or properly protected, provided, further, that wherever such building or buildings over three stories high are being erected in any city or town, other than a residence, temporary toilets in or convenient to such building shall be maintained for the convenience of employees.

Violation of Act—Duty of Building Inspector.

Section 5. Any person violating any of the provisions of the foregoing sections shall be fined not less than one hundred dollars nor more than two hundred dollars for each offense. It is hereby made the duty of the building inspector, his deputy or other authorities in any county, city, town or village in the state, through the county attorney or any other attorney; in case of failure of such owner, person or corporation to comply with this act promptly, to take the necessary steps to enforce the provisions of this act.

Section 6. This act shall take effect and be in force from and after its passage and approval.

Approved March 6, 1909.

BONDS FOR WINGS TO STATE CAPITOL.

Chapter 63, Laws 1909, page 69.

An act to provide for the issue and sale, by the State Board of Examiners, of bonds for the purpose of erecting wings to the state capitol building; and to provide for the erection of said wings under the authority and direction of the State Board of Examiners.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That State Board of Examiners of the state of Montana are hereby authorized to issue and dispose of bonds for the purpose of erecting wings at the east and west ends of the state capitol building, at Helena, Montana, under the following conditions and restrictions, to wit:

First: The aggregate amount of bonds authorized by this act shall not exceed the sum of five hundred thousand dollars.

Second: The denomination of each bond shall be one thousand dollars.

Third: The term of said bonds shall not exceed thirty years from their date, and they shall be payable at any time after fifteen years from their date, at the option of the State Board of Examiners.

Fourth: The bonds may bear any rate of interest not in excess of five per cent per annum, and the interest may be payable semi-annually.

Five: The principal and interest shall be payable at the office of the state treasurer, at Helena, Montana.

Sixth: The State Board of Examiners shall prescribe the form of the bond, and the bonds shall bear upon their face the words, "Second Issue Capitol Building Bonds of the State of Montana," and shall be signed by the members of the State Board of Examiners, and the great seal of the state of Montana shall be affixed to each bond, and the bonds shall be registered in the office of the state treasurer.

Seventh: The coupons representing the interest on the bonds shall have lithographic facsimile signatures of the members of the State Board of Examiners affixed thereon.

Section 2. The bonds provided for in this act shall be disposed of by the State Board of Examiners in such manner as they shall deem for the best interest of the state, provided that no bond shall be disposed of for less than its par value.

Section 3. The principal and interest of the bonds authorized by this act shall be paid out of the special fund provided for by section 1240, Revised Codes of Montana of 1907, designated as the "Capitol Building Interest and Sinking Fund," and from said "Capitol Building Interest and Sinking Fund" there shall, as the same becomes due and payable, be paid the interest on the said bonds; and it is further provided, that it is the duty of the State Board of Land Commissioners, whenever there are any funds in the said "Capitol Building Interest and Sinking Fund," over and above the sum of twenty-five hundred dollars in excess of the amount required to pay the yearly interest on the bonds issued pursuant to section 1238, of the Revised Codes of Montana of 1907, known as the "Capitol Building Bonds of the State of Montana," and the interest on the bonds provided for by this act, to invest such access funds in the manner set forth and provided in section 1241, of the Revised Codes of Montana of 1907, and the amount so invested shall constitute a permanent fund to pay the principal of the bonds issued pursuant to section 1238, of the Revised Codes, and the bonds issued pursuant to this act, but all interest or profit derived from the investment shall be paid into the "State Capitol Building Interest and Sinking Fund," and the principal and interest of the bonds issued pursuant to section 1238, Revised Codes, shall be a first lien upon said funds and the lands granted and belonging to the state for the purpose of erecting buildings at the state capitol, and the principal and interest of the bonds authorized by this act shall be a second lien upon said funds and all lands granted and belonging to the state for the purpose of erecting buildings at the state capitol.

Section 4. It is hereby provided and set forth that in the event the state of Montana shall at any time provide and pay the interest, or any part thereof, on the bonds authorized by this act from the general fund of the state, or by any special appropriation made, or taxes levied therefor, then for any and all interest so paid the state shall be reimbursed from the said "Capitol Building and Interest and Sinking Fund" by the payment of the amount so paid or due whenever there is sufficient money in said "Capitol

Building Interest and Sinking Fund" to pay the same after paying the principal and interest due on the bonds issued pursuant to section 1238 of the Revised Codes of Montana of 1907.

Section 5. The State Treasurer is hereby designated as the custodian of the funds provided by this act, and he shall pay all warrants properly drawn by the State Auditor, save and except as to the interest on the bonds, which he shall pay as the same become due, and charge the amount thereof to the "Capitol Building Interest and Sinking Fund" hereinbefore referred to.

Section 6. Whenever any bonds authorized by this act shall become due and payable, and there is sufficient funds to pay the same, they shall be called in and paid in the order of their issuance, beginning with the lowest number.

Section 7. The cost and expense of issuing the bonds provided for by this act may be paid out of the proceeds from the sale thereof, or be chargeable to the expenses of the construction of said wings to the capitol building.

Section 8. In the event there shall not at any time be sufficient money in the "Capitol Building Interest and Sinking Fund" to pay the interest when due, the State Board of Examiners shall, by an order entered on their minutes or record-books, cause warrants to be issued on the said "Capitol Building Interest and Sinking Fund" for the amount of interest due, and the warrants so issued shall be registered in the office of the treasurer of the state and shall bear interest at the rate of five per cent per annum, and said warrants shall be paid by the state treasurer whenever there is sufficient money accumulated in said fund to pay the same, after paying the interest on the bonds issued pursuant to section 1238 of the Revised Codes, and by reason of the delivery of said warrants to the holders of said bonds, and the surrender of the said interest coupons, there shall be no default in the payment of interest.

Section 9. Nothing in this act shall be so construed as to in any wise hold the state of Montana liable for the payment of the bonds herein authorized, or the interest thereon, except as to the lien heretofore created against the lands and funds granted for the purpose of erecting buildings at the state capitol, and such liens shall not be abridged or set aside until the bonds authorized by this act shall have been fully paid, together with interest thereon, and the Governor is hereby especially authorized and empowered to use all lawful means to enforce the provisions of this act.

Section 10. All moneys received from the sale of the bonds authorized by this act shall be paid to the State Treasurer, and shall constitute a special fund for the erection of said wings to the state capitol building, and shall be disbursed by the State Treasurer on warrants properly drawn by the State Auditor, pursuant to the order of the State Board of Examiners.

Section 11. Upon the sale of the bonds authorized by this act it shall be the duty of the State Board of Examiners to secure the erection and completion of wings at the east and west ends of the state capitol building. In furtherance of this purpose said board shall procure plans and specifications in such manner as the board shall direct, under proper and safe conditions. The architect whose plan is selected as the plan for said wings must be required to furnish full and complete specifications for the erection and heating, lighting and plumbing of the same, with full and complete full-sized drawings and details and working plans so that any capable architect may take

the plans, drawings and specifications submitted and erect said wings in accordance therewith. The board may employ, with the consent of the designing architect, any skilled and reputable architect as supervising architect of said wings, if in its judgment the best interests of the state would be subserved thereby.

Section 12. The architect whose plan is selected by the board shall receive such compensation as the board shall deem reasonable. He shall prepare all plans, specifications and details for all contracts for construction and material for said wings, and if employed by the board to superintend the construction of said wings he shall see that all material furnished and work done shall be of the best quality, and that all contracts with the said board are faithfully performed by the parties contracting with said board for work or material. He shall perform all other duties devolving upon him as supervising architect and may be removed at the pleasure of said board. Neither said architect, nor any of his subordinates or assistants shall be in any way connected with any work done or material furnished for said wings, or any contract therefor, or shall have any interest therein, directly or indirectly. He shall furnish bond to the state of Montana in the sum of fifteen thousand dollars, with a fidelity company authorized to do business under the laws of this state, as surety, condition for the faithful performance by said architect, his assistants and subordinates of his and their duties as herein prescribed, provided that the superintendents and contractors shall be residents of the state of Montana.

Section 13. The board may appoint a specially qualified person to act as superintendent of the construction of said wings. It shall be his duty to see that all contracts made with the board are faithfully performed, that all material furnished and the work done shall be as required by law or the contract therefor, that all duties imposed upon the architect are faithfully performed by him and his subordinates and that no provisions of this act are violated. To report to the board any violation of this act or of any contract or of any duty by any architect, contractor or employee of said board, and to do such other duties as may be required of him by the board. Said superintendent shall receive as his compensation such sum as the board shall deem reasonable, not exceeding eight dollars per day for each and every day he is actually engaged in the performance of his duties. He shall be removed at the pleasure of the board.

Section 14. The board shall procure all material used in the construction of said building from the products of the state of Montana, provided the same is produced in the state of Montana and can be procured as cheaply therein as material of like kind and quality can be procured elsewhere, and, provided, further, that the total cost of the erection and furnishing of said wings, including steam-heating apparatus and other fixtures shall not exceed the sum of five hundred thousand dollars, and the board shall at all times have this object in view, and all plans accepted, and all contracts awarded, shall be accepted and awarded only after the board shall be satisfied that the cost of the wings, when they shall be completed and furnished, shall not exceed said sum.

Section 15. The entire construction and furnishing of said wings shall be completed by the first day of January, 1911; provided, that the bonds provided for in this act shall have been sold in time to enable the commencement of work so as to complete the wings by that date.

Section 16. All disbursements on account of the erection of said wings shall be made pursuant to the orders of said board. All claims, bills and

demands for labor performed or material furnished shall be presented to the board in duplicate, and shall be fully itemized, and shall be passed upon by said board only at regular sessions thereof and after careful examination of every item named. If found correct they shall audit the same, preserving one duplicate and transmitting the other to the State Auditor, with directions to the State Auditor to draw his warrant on the special fund for the erection of the wings to the state capitol building for the amount allowed and to the order of the person named in said order; provided, that no order shall be issued by the State Board of Examiners in excess of the amount received from the sale of the bonds authorized by this act.

Section 17. This act shall be in full force and effect from and after its passage and approval.

Approved March 4, 1909.

Power of State Examiner to Expend Funds to Erect Wings of Capitol.

Be it enacted by the Legislative Assembly of the State of Montana:

That the State Board of Examiners be and it is hereby fully authorized and empowered to expend the entire amount of money authorized to be secured from the bond issue provided for by the act of the Eleventh Legislative Assembly entitled an act to provide for the issue and sale by the State Board of Examiners of bonds for the purpose of erecting wings to the state capitol building; and to provide for the erection of said wings under the authority and direction of the State Board of Examiners, approved March 4, 1909, and in addition thereto the entire amount authorized by the bond issue provided for by the act of the Eleventh Legislative Assembly passed at the extraordinary session thereof, entitled an act to provide for the issue and sale by the State Board of Examiners of additional bonds for the purpose of erecting wings to the state capitol building and to provide for the erection of said wings under the authority and direction of the said State Board of Examiners, approved December 30, 1909, in the erection, completion, decorating and furnishing of the wings to the state capitol now in course of construction, and that the only limitation upon the said State Board of Examiners, in their actions with reference to said wings and the full completion, furnishing and decoration thereof be the full amount of said bond issues, namely, the sum of six hundred fifty thousand (\$650,000) dollars. [Approved February 11, 1911; Laws 1911, c. 19, p. 23.]

FORMATION OF NEW COUNTIES.

Chapter 139, Laws 1915, page 301.

"An act to provide for the creation, organization, and classification of new counties; for locating county seats; for the election and appointment of officers; for the adjustment and fulfillment of the rights and obligations arising between such new counties and other counties; and providing penalties for the violation thereof; and to repeal chapter 112 of the Session Laws of the Twelfth Legislative Assembly of 1911, and chapter 133 and chapter 135 of the Session Laws of the Thirteenth Legislative Assembly of 1913."

Be it enacted by the Legislative Assembly of the State of Montana:

In General—Debts and Assets Prorated.

Section 1. New counties may from time to time be formed and created in this state from portions of one or more counties, which shall have been

created and in existence for a period of more than two years, in the manner set forth and provided in this act; provided, however, that no new county shall be established which shall reduce any county to an assessed valuation of less than eight million dollars, inclusive of all assessed valuation as shown by the last preceding assessment; nor shall any new county be formed which contains an assessed valuation of property less than five million dollars, inclusive of all assessed valuation as shown by the last preceding assessment, of the county or counties from which such new county is to be established, nor shall any line thereof pass within twenty miles of the boundaries of the county seat of the county sought to be divided; provided, that such county line may be run within a distance of ten miles of a county seat in cases where the natural contour of the country, by reason of mountain ranges or other topographical conditions, are such as to make it difficult to reach the county seat, and in such cases a petition signed by at least sixty-five per cent of the voters in the proposed new county shall be presented to the judge of the district court in which the county affected is located, asking for the appointment of a commission of five disinterested persons who shall determine if the topographical conditions are such as to warrant the fixing of the county division lines closer than at twenty miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in section 2 of this act.

Every county which shall be enlarged or created from the territory taken from any other county or counties shall be liable for a pro rata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, and shall be entitled to a pro rata proportion of the assets of the county or counties from which such territory is taken, to be determined as hereinafter provided.

Petition for Creation of New County — Attached Affidavits — Notice and Hearing.

Section 2. Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the Board of County Commissioners of the county from which the new county is to be formed in case said proposed new county is to be formed from but one county; or to the Board of County Commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties; and such Board of County Commissioners shall be empowered and have jurisdiction to do and perform all acts provided for to be done or performed in this act, for each of the several counties from which any proposed territory is to be taken, and shall direct that a certified copy of all orders and proceedings had before such Board of County Commissioners shall be certified by the county clerk to the Board of County Commissioners of each of the several counties from which any territory is taken by the proposed new county; and all officers of any such county from which any territory is taken by the proposed new county shall comply with the orders of the Board of County Commissioners in the same manner as if said order had been duly made by the Board of County Commissioners of each respective county from which territory is proposed to be taken.

Such petition shall be signed by at least sixty-five per cent of the qualified electors of the proposed new county, whose names appear on the official registration books and who are shown thereon to have voted at the last general election preceding the presentation of said petition to the Board of County Commissioners as herein provided; provided, that in cases where the proposed new county is to be formed from portions of two or more existing counties, separate petitions shall be presented from the territory taken from each county; and each of said separate petitions shall be signed by at least sixty-five per cent of the qualified electors of each of said proposed portions. Such signatures need not all be appended to one paper but may be signed to several petitions which must be similar in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition.

Such petition or petitions shall contain:

1. A particular description of the boundaries of the proposed new county.
2. A statement that no line thereof passes within twenty miles of the outer boundaries of the county seat of any county proposed to be divided, except as hereinbefore in this act provided.
3. A statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation.
4. A statement of the surveyed area in square miles which will remain in the county or counties from which territory is taken to form such new county, after such county is formed.
5. The name of the proposed new county.
6. A prayer that such proposed new county be organized into a new county under the provisions of this act.

There shall be attached to and filed with said petition or petitions the affidavit of three qualified electors and taxpayers residing within each county sought to be divided, to the effect that they have read said petition and examined the signatures affixed thereto, and they believe that the statements therein are true, and that it is signed by at least sixty-five per cent of the qualified electors, as herein provided, of the proposed new county, or of the proposed portion thereof, taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties; that the signatures affixed thereto are genuine; and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing. Such petition or petitions so verified and the verification thereof shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth. Upon the filing of such petition or petitions and affidavit with the clerk of the said Board of County Commissioners, said clerk shall forthwith fix a date to hear the proof of the said petitions and of any opponents thereto, which date must be at the next regular quarterly meeting subsequent to the filing of such petition with the clerk of said board. The county clerk shall also at the same time designate a newspaper of general circulation published in the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the

boundaries of the proposed new county, if there be such, in which the said county clerk shall order and cause to be published at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

Notice.

Notice is hereby given that a petition has been presented to the Board of County Commissioners of County (naming the county represented by the Board of County Commissioners with which said petition was filed), praying for the formation of a new county out of portion of the said county and county (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the said Board of County Commissioners at its place of meeting (designating the city or town and the day and hour of the meeting so to be held), when and where all persons interested may appear and oppose the granting of said petition and make any objections thereto.

Dated at Montana.

....., County Clerk.

Said petitioners shall, on or before the date fixed for said hearing, or on or before the date to which said hearing may have been adjourned, file with said Board of County Commissioners a bond to be approved by said board, in the amount of five thousand dollars (\$5,000) payable to the county in which said petition is filed, conditioned that the obligators named in said bond will pay to said county all expenses incurred in the proceedings and election provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for more than thirty-five per cent of the votes cast at said election are "for the new county of (naming the proposed new county)" "No."

At the time so fixed for said hearing, the Board of County Commissioners shall proceed to hear the petitioners and any opponents upon the petition or protests filed on or before the time fixed for the hearing. No petition, or protest, or petition for the exclusion of territory shall be considered unless the same is filed on or before the time fixed for the hearing, and the Board of County Commissioners may adjourn such hearing from time to time, not exceeding fourteen days in all, and shall receive the proofs to establish or controvert the facts set forth in said petition or petitions. No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signature from the petition for the exclusion of territory shall be received or considered which is not filed within three days after the filing of the petition for such exclusion of territory, and not more than one withdrawal of any signature from any petition shall be permitted, granted, or considered. Any person filing a withdrawal of his signature from the original petition for the creation of said county, or from the petition for the exclusion of territory, shall be considered and counted by the Board of County Commissioners as being opposed to the creation of said county.

The Board of County Commissioners on the final hearing of such petition or petitions shall, by a resolution entered on its minutes, determine:

1. The boundaries of the proposed new county and the boundaries so determined by said Board of County Commissioners shall be the boundaries of such proposed new county, if it be created as herein provided.

2. Whether the said petition contains the genuine signatures of at least sixty-five per cent of the qualified electors of the proposed new county as herein required, or in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least sixty-five per cent of the qualified electors of that portion of each of such existing counties which it is proposed to take into the proposed new county.

3. Whether any line of the proposed new county passes within twenty miles of the county seat of any county proposed to be divided, except as hereinbefore in this act provided.

4. Whether the proposed new county will contain property, according to the last preceding assessment, which will equal in amount at least five million dollars (\$5,000,000), inclusive of all assessed valuation.

5. Whether the area of any existing county from which territory is taken to form such new county will be reduced to less than twelve hundred (1200) square miles of surveyed land, by taking the territory proposed to be taken therefrom to form such new county.

6. The class to which said proposed new county after its creation will belong and the name of said proposed new county, as stated in such petition.

7. Whether the area embraced within the proposed new county will be reasonably compact.

On the final hearing of the Board of Commissioners, upon petition of not less than fifty per cent of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within said proposed new county and contiguous to the boundary line of the said proposed new county and of the old county from which such territory is proposed to be taken, and lying entirely within a single old county and described in said petition, asking that said territory be not included within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries; provided, that if any change or changes so made shall result in reducing the valuation of the proposed new county to less than an assessed valuation of five million dollars, inclusive of all assessed valuation, then such new county shall not be created or organized; and provided further, that no change shall be made which shall leave the territory so excluded separate and apart from and without the county of which it was formerly a part; petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the clerk of the Board of County Commissioners, and on final determination of boundaries no changes in the boundaries originally proposed shall be made except as prayed for in said petition or petitions, or to correct clerical errors or uncertainties.

Duties of Commissioners, When Findings Justify New County—Division into Township, Road and School Districts—Change of Boundaries of Election Precincts—Election—Temporary County Seat.

Section 3. If the said Board of County Commissioners determine that the formation of said proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than eight

million dollars (\$8,000,000), inclusive of all assessed valuation, nor the area thereof to less than twelve hundred (1200) square miles of surveyed land, and that the proposed new county contains property of an assessed valuation of at least five million dollars (\$5,000,000), inclusive of all assessed valuation, and that no line of said proposed new county passes within twenty miles of the outer boundaries of the county seat of any county proposed to be divided, except as hereinbefore in this act provided, and that said petition contains the genuine signatures of at least sixty-five per cent of the qualified electors of the proposed new county, or in cases where separate petitions are presented from portions of two or more existing counties (as herein required), that each of said petitions contain the genuine signatures of at least sixty-five per cent of the qualified electors of that portion of the proposed new county from which it is taken, then the said Board of County Commissioners shall divide the proposed new county into a convenient number of township, road, and school districts and define their boundaries and designate the names of such districts. Said Board of County Commissioners shall also, if necessary for the purpose of the election hereinafter provided for, change the boundaries of the election precincts in said old county or counties to make the same conform to the boundaries of the proposed new county; provided, that the boundary lines of no such precinct shall extend beyond the boundary lines of the then existing county in which it is located and from which the territory is proposed to be taken; and said board shall appoint election officers to act at said election and to be paid by said board. Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said Board of County Commissioners shall order and give proclamation and notice of an election to be held on a specified day in the territory which is proposed to be taken for the new county, not less than ninety days nor more than one hundred and twenty days thereafter, for the purpose of determining whether such territory shall be established and organized into a new county; and for the election of officers and location of a county seat therefor, in case the vote at such election shall be in favor of the establishment and organization of such new county. All qualified electors residing within the proposed new county who are qualified electors of the county or counties from which territory is taken to form such proposed new county, and who have resided within the limits of the proposed county for a period of more than six months next preceding the day of election, and who are registered under the provisions of the registration laws of the state, shall be entitled to vote at said election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of Montana. Such proclamation and notice of election shall be published at least once a week for three weeks before the holding of such election, in some newspaper of general circulation published in the territory which is proposed to be taken for the new county, and a copy thereof shall be mailed immediately by the county clerk of the county in which the petition is filed to the county clerk of each county from which territory is taken for the proposed new county. Such proclamation and notice shall require the voters to cast ballots which shall contain the words, "For the new county of . . . (giving the name of the proposed new county)" "Yes," and "For the new county of . . . (giving the name of the proposed new county)" "No," and each voter desiring to vote for the establishment

and organization of said new county shall mark a cross (X) opposite the words, "For the new county of" "Yes" in the manner now required by law in other elections, and each voter desiring to vote against the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of" "No," in the manner now required by law in other elections; and shall also contain the names of persons to be voted for to fill the various elective offices designated in said proclamation for counties of the class to which said proposed county will belong, as determined by the Board of County Commissioners as herein directed and in the manner provided by law, except as herein otherwise provided. There shall also be printed upon said ballot the words, "For the county seat," and the names of all cities or towns which may have been incorporated under the laws of the state for a period of one year preceding the day of the filing and presentation of the original petition, and which may have filed with the county clerk a petition signed by at least twenty-five qualified electors, nominating any city or town within the proposed new county for the county seat, and the voter shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot. At a special election to be held, as provided in this act, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county, and the majority of all the votes cast therefor shall determine the election thereon. In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat, and in case any city or town is not the choice of the election for the county seat by a majority of all votes cast, the question of choice between the two incorporated cities or towns for which the highest number of votes shall have been cast, shall be submitted in like manner to the qualified electors at the next general election thereafter. When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

The proclamation calling the election and the notice thereof provided for in this act shall be made and given exclusively by the Board of County Commissioners with which is filed the said petition for the formation and establishment of such new county and such board shall cause the clerk of said county to furnish to the officers of each precinct in such proposed new county all ballots, poll lists, tally lists, registers for voter's signatures, ballot-boxes, and other election supplies and equipment necessary to conduct such election and which are not hereinafter specifically directed to be furnished by the clerk of another county or counties. Such election shall be governed and controlled by the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided. The returns of all elections for officers and for location of the county seat as provided for in this act, shall be made to and canvassed by the Board of County Commissioners of the county from which the largest area is taken by the proposed county.

The county clerk of each county from which territory is taken for the proposed new county shall not less than five days before the date of such election furnish to each board of election within said proposed new county, the book of affidavits of registration for the precincts of such proposed new county as are within their respective counties, and the copies of indexes

thereof required by law, containing the names of all persons who were qualified electors at the last general election before the date of such election.

All returns of election herein provided for shall be made to the Board of County Commissioners calling such election.

All nominations of candidates for the offices required to be filled at said election shall be made in the manner provided by law for the nomination of candidates for all general state elections.

The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of said laws relating to primary elections in this state, shall have application to any election provided for in this act.

See following chapter on Location of County Seats.

Measures to be Taken After Election—Officers—Effect of Adverse Vote.

Section 4. If upon the canvass of the votes cast at such election it appears that sixty-five per cent of the votes cast where the proposed new county is formed from one existing county, or that sixty-five per cent of the votes cast in the territory taken from each county where the proposed new county is formed from two or more existing counties are, "For the new county of" "Yes," the Board of County Commissioners shall by a resolution entered upon its minutes declare such territory duly formed and created as a county of this state, of the class to which the same shall belong, under the name of . . . county, and that the incorporated city or town receiving the highest number of votes cast at said election for county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the persons receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices. Said board shall forthwith cause a copy of its said resolution, duly certified, to be filed in the office of the Secretary of State, and ninety (90) days from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state. The clerk of the Board of County Commissioners with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of the said Board of County Commissioners. The persons elected members of the Board of County Commissioners and the county clerk shall immediately, upon receiving their certificates of election, assume the duties of their respective offices.

The Board of County Commissioners shall have authority to provide a suitable place for the county officers and to purchase such supplies as may be deemed necessary for the proper conduct of the county government. All other officers take office ninety (90) days after the filing of the resolution herein provided for with the Secretary of State. All the officers elected at said election, or appointed under this act, shall hold their offices until the time provided by general law for the election and qualification of such officers in this state and until their successors are elected and qualified, and for the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election. If, however, upon such canvass it appears

that more than thirty-five per cent of the votes cast at said election where the proposed new county is formed from one existing county, or that more than thirty-five per cent of the votes in the territory taken from any county, where the proposed new county is formed from two or more existing counties, are, "For the new county of" "No," the Board of County Commissioners canvassing said vote as provided herein shall pass a resolution in accordance therewith and thereupon the proceedings relating to division of such county or counties shall cease; and no other proceedings in relation to any other division of said old county or counties shall be instituted for at least two years after such determination.

Officers of New County—Judicial District.

Section 5. At the election provided for in section 3 of this act there shall be chosen such county, township, and district officers as are now or may hereafter by general law be provided for in counties of the class to which the said new county is determined to belong, as herein provided; provided, that all duly elected, qualified, and acting officers of the county or counties, who may reside within the proposed new county, shall be deemed to be officers of said new county if they file with the Board of County Commissioners, whose duty it shall be to call the election, within five days after the final hearing and determination of said petition for such proposed new county, their intention to become officers of said proposed new county and the Board of County Commissioners issuing the proclamation of any election, as in this act provided, shall omit providing for the election of any such officers as may have filed their declaration as herein provided; and provided, also, that all duly elected, qualified, and acting justices of the peace and constables residing within the proposed new county at the time of the division of such county into townships, as hereinbefore in section 3 hereof provided, shall hold office as such justices of the peace or constables in said county for the remainder of the term for which they were elected on qualifying as justices of the peace or constables for the respective townships in which they reside, when said townships are organized as provided in this act; provided further, that all duly-elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as hereinbefore in section 3 hereof provided, shall hold office as school trustees in said new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as said districts are organized as provided by this act. Each person elected or appointed to fill an office of such new county under the provisions of this act shall qualify in the manner provided by law for such officers, except as herein otherwise provided, and shall enter upon the discharge of the duties of his office within such time as herein provided, after the receipt of the certificate of his election. Each of such officers may take the oath of office before any officers authorized by the law of the state of Montana to administer oaths, and the bond of any officer from which a bond is required shall be approved by any judge of the district court of the district to which such new county is attached for judicial purposes. The officers elected or appointed under the provisions of this act shall each perform the duties and receive the compensation now provided by general law for the office to which he has been appointed or elected in the counties of the class to which such new county shall have been determined to belong, as herein provided under the general classification of counties in this state.

Said new county when created and organized in pursuance of the provisions of this act shall be attached to such judicial district as may be designated by the Governor of the state of Montana, in a proclamation to be issued by him, designating such new county as attached to the particular judicial district for judicial purposes.

Commission Appointed by Governor to Adjust Indebtedness of Old and New Counties.

Section 6. It shall be the duty of the persons elected to or continuing to hold the office of county commissioners of said new county to meet at the county seat thereof within five days after all of them shall have qualified, and upon organization of said Board of County Commissioners it shall notify the Governor of the state of the organization of said county, and thereupon it shall be the duty of the Governor to appoint three persons, one of whom shall be a resident and a taxpayer within the new county and no two of whom shall be from any one county; the three persons so appointed shall form and be a Board of Commissioners. Such commissioners shall, within ten days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their number a chairman, and also elect a secretary who must not be a member of said commission. Thereafter such commission may meet at such place or places as it may select. A majority of such commissioners shall constitute a quorum for the transaction of business. Said commission shall have power to compel by citation or subpoena, signed by their president and secretary, the attendance of such persons and the production of such books and papers before said commission as may be required in the performance of the duties imposed by this act, except that the official records of any county or counties from which said new county was formed shall in no case be taken from the county seat of said county. It shall be the duty of the sheriff of any county to execute in his county all lawful orders and citations of the said commission; and for any services so performed the sheriff shall be allowed the same fees as are allowed to him for services in civil actions; and all witnesses attending before said commission shall be entitled to the same compensation and mileage as is allowed to witnesses in courts of record; provided, that no witness shall be excused from attendance at the time and place mentioned in said order or citation by reason of the failure of the officer making such service to tender to such witness his fees and mileage in advance.

Determination of Amount of Indebtedness and Value of Property—Taxation.

Section 7. Said Board of Commissioners shall immediately after its organization ascertain the costs of the election held hereunder, and apportion the same pro rata among each of the counties from which territory was taken to form such new county; shall ascertain the indebtedness of each county from which territory was taken to form the new county, as the same existed at the time when the result of the election was declared by the Board of County Commissioners, as hereinbefore provided, and also ascertain the total value of all property at the time belonging to each of said counties from which territory was taken and situated within the limits of said old counties, respectively. It shall also ascertain the assessed value of all property in each of the original old counties from which territory was so taken, according to the last completed assessment made for said county, and also the assessed value, under the same assessment, of all property

within the territory of the new county which shall have been taken from the old county or counties from which said new county was formed. They shall then find the difference between the amount of the indebtedness of the old county and the value of the property belonging to the old county at the date of the declaration of the result of said election, as hereinbefore provided, and if such indebtedness exceeds the value of such property belonging to the old county, the new county shall pay to the old county a due proportion thereof to be determined as follows:

"As said assessed value of the property in the old county is to the said assessed value of the property in the territory provided by this act to be incorporated within the new county from said old county, so is the amount of said excess to the amount to be paid by said new county to said old county."

Said Board of Commissioners shall certify forthwith to the Board of County Commissioners of the new county and the old counties thereby affected, the amount constituting the due proportion of said excess payable by such new county to each of them; also the value of any property belonging to each old county at the time when said division took effect (as hereinbefore provided) which is situated in the new county. The sum of said ascertained value of said last-mentioned property added to the ascertained proportion of said excess which the new county is to pay to the old county, and its proportion of the expense of said election as aforesaid, shall be an indebtedness from the new county to the old county, and the said property situated as aforesaid in the new county shall upon settlement therefor, as provided in this act, become the property of the new county; and the old county shall pay the entire indebtedness against it, and the expense of said election shall be paid by the county calling such election, and any other county affected thereby shall pay its proportion thereof, as hereinbefore provided. The proceedings in this section required to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county, in the manner and at the ratio in said section provided. If upon the settlement between the old and new county as herein provided for, the new county shall be found to be indebted to the old county, or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county, and said new county shall pay the same; provided, however, that such payment by said new county may be made in not more than three equal annual payments, or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the Board of County Commissioners of said new county, adopted within one year after the receipt of the statement from the Board of Commissioners as aforesaid of the amount or amounts due from it. If the value of the property belonging to the old county exceeds the indebtedness of the old county, then the old county shall pay to the new county a due proportion of such excess, which proportion shall be determined by the Board of Commissioners and shall be paid by the old county to the new county in the same manner and subject to the same conditions herein provided for payment by the new county to the old county, when the indebtedness of the old county exceeds the value of the property in the old county. In the determination of the value of county property all buildings and their furniture, real estate, road tools, and machinery and all steel bridges which may have been constructed and in

use for a less period than ten years, shall be taken into consideration by the said commissioners.

Delinquent taxes due to the old county against property situated in the new county shall be transcribed in and collected by the new county.

Compensation and Expenses of Commissioners.

Section 8. Members of the Board of Commissioners provided for under this act shall receive a compensation of not to exceed eight dollars (\$8) per day for every day they are actually employed under the provisions of this act, together with their actual expenses incurred in the performance of their duties, and the clerk of said board shall receive as compensation for his services not to exceed five dollars (\$5) per day for every day that he is actually employed under the provisions of this act, all of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses, shall be borne in equal proportions by the counties affected by such division, including said new county and the amounts payable by each county shall be paid by the treasurers of the respective counties, after the same shall have been presented to and allowed by the Board of County Commissioners, as is provided by law for claims against any county.

Assessment and Collection of Taxes.

Section 9. After the creation of a new county, as herein provided, its officers shall proceed to complete all proceedings necessary for the assessment or collection of the state and county taxes for the then current year, and all acts and steps theretofore taken by the officers of the old county or counties prior to the creation of the new county shall be deemed and taken as having been performed by the officers of the new county for the benefit of the new county; and upon the creation of the new county it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the Board of County Commissioners of such new county copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes of property in such new county. Such copies shall be filed with the respective officers of the new county who would have the custody of the same if the proceeding had been originally had in the new county, and such certified copies shall be taken and deemed as originals and original proceedings in the new county, and all proceedings therein recited shall be taken and deemed as original proceedings in the new county, and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county; and the officials of the new county are hereby authorized and directed to proceed thenceforth with the assessment and collection of said taxes as if the proceedings originally had in the old county or counties had been originally had in the new county.

School and Road Funds.

Section 10. The county superintendent of schools of the old county or each of the old counties, respectively, shall furnish the county superintendent of schools of the new county with a certified copy of the last school census of the different school districts in the territory set apart to form the new county, and shall certify to the Board of County Commissioners the amount due; and said board shall order a warrant drawn on the treasurer of the old county in favor of the treasurer of the new county, for all

the money that is or may be due by any apportionment or otherwise to the different school districts embraced in the new county from his county; and the county treasurer shall certify to the county commissioners the amount due in the different road funds, and the county commissioners shall order a warrant drawn on the treasurer of their county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county from their county, which said amounts shall be properly credited in both counties. And whenever in the formation of a new county a road or school district has been divided, the Board of County Commissioners shall by resolution direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

Records, Books and Papers.

Section 11. The Board of County Commissioners of any new county formed as aforesaid must provide suitable books and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property, or the title thereof, situated in the new county, and said records when so transcribed and certified, as herein provided, shall have the same force and effect as such original records; the said county commissioners shall have full power and authority to contract for transcribing of records as now provided by law; providing, that all chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration which may affect or relate to property or persons situate within the new county, shall be by the county clerk of the old county delivered to the county clerk of the new county and be preserved by said county clerk of the new county as permanent files of such new county.

Transfer of Pending Actions in District Court.

Section 12. All actions pending in the district court of the old county or counties for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon, or any other actions affecting real estate lying in the new county shall, on motion of any party thereto, be transferred to the district court to which the new county may be attached for judicial purposes, and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of the new county. All other actions or special proceedings pending in the district court or courts of said old county or counties, if said new county had been in existence at the date in which it is pending and on motion of any party interested therein shall be transferred to the district court of such new county.

Publication by Posting of Notice.

Section 13. Whenever in this act publication of any notice is provided for and no newspaper of general circulation is published within the territory in which said notice is required to be published, notice shall be given by posting copies of such notice in at least ten public places in such territories for the same length of time said notice was required to be published.

State Senator and Member of the House of New County.

Section 14. The territory within the limits of any new county, until otherwise provided by law, shall be entitled to representation in the state

Senate by one state senator; and to representation in the House of Representatives by one member of the House of Representatives.

Misdemeanor and Malfeasance in Office.

Section 15. Any member of the Board of County Commissioners or any other officer who unlawfully and knowingly violates any of the provisions of this act, or fails to perform any duty imposed upon him hereunder, shall be guilty of a misdemeanor and of malfeasance in office, and shall be deprived of his office by a decree of a court of competent jurisdiction, after trial and conviction.

Repealing Clause — Saving Clause — Effect of Act on Proposed New Counties.

Section 16. All acts and parts of acts in conflict herewith are hereby repealed, with the exception: "This act shall not apply in any case whereby the election has been held under the act passed by the Thirteenth Legislative Session for the creation of counties and a majority vote has been cast in favor thereof," but the provisions of this act shall be deemed in full force and effect so far as they may affect any proposed new county now in process of creation, unless said new county can comply with the requirements of this act; and it is hereby made the duty of the Board of County Commissioners which may have ordered any election in pursuance of existing laws, to immediately make an order annulling and setting aside all further proceedings in relation to such proposed new county, including an order to nullify and set aside any election order theretofore made; provided, if any order is made nullifying and setting aside any election as provided in this section, any bond which may have been given in pursuance with the provisions of law relating to the costs of the election for the creation of any proposed new county shall be deemed void, and no liability shall be incurred thereunder.

Section 17. This act shall be in full force and effect from and after its passage and approval.

Approved March 9, 1915.

The following decisions have been made by the supreme court in construing chapter 112 of Laws of 1911:

The proceedings for the creation of a new county are initiated by filing with the Board of County Commissioners a petition describing the territory sought to be included in the new county. The proceeding is an entirety, and includes all steps taken from the time of this filing until a copy of the resolution declaring the result of the election is presented to the Secretary of State. *State v. Board of County Commrs.*, 44 Mont. 57, 118 Pac. 804.

Generally speaking, bridges are not such county property as to have their value brought under consideration in the adjustment of the indebtedness of the old county with the new one. A bridge is to be treated as but a portion of a public highway. *State ex rel. Foster v. Ritch*, 49 Mont. 156, 140 Pac. 731.

While, under certain circumstances, the board is authorized to exclude territory, there is not any authority in it to incor-

porate new territory for which there has not been any petition presented. *State v. Board of County Commrs.*, 47 Mont. 537 et seq., 134 Pac. 291.

In providing for the erection of a new county and that at an election therefor a city or town shall be chosen to be the county seat, the choice is not confined to incorporated municipalities, unless so required expressly. *State ex rel. Powers v. Dale*, 47 Mont. 228, 231, Ann. Cas. 1914D, 227, 131 Pac. 670.

The change in the involuntary character of counties brought about by the new counties act is not such as to affect the status of counties as political subdivisions of the state for governmental purposes; only incorporated cities and towns are municipal corporations. *Hersey v. Neilson*, 47 Mont. 144, Ann. Cas. 1914C, 963, 131 Pac. 30.

When the Leighton act was passed, the law for the great register was not in existence; therefore it cannot be said that the Leighton act contemplated registration in the great register as a qualification for

electors, or that the great register should be the sole, or any, basis upon which to determine the number of qualified electors resident in the territory to be excluded. State ex rel. Lang v. Furnish, 48 Mont. 28, 34, 134 Pac. 297.

The number of signatures to the petition for the erection of the new county must be at least one-half of all the electors whose names are on the registration list, exclusive of those found to be disqualified. State ex rel. Bogy v. Board of County Commrs., 43 Mont. 537, 117 Pac. 1062.

Under the Leighton act and under the present act (new counties act) the board is to determine whether the counter petition, for the exclusion of territory, contained at the time of its being filed the names of fifty per cent of the qualified electors within such

territory, the required signers not being confined to registered voters. State ex rel. Lang v. Furnish, 48 Mont. 30 et seq., 134 Pac. 297.

While, under certain circumstances, the board is authorized to exclude territory, there is not any authority in it to incorporate new territory for which there has not been any petition presented. State v. Board of County Commrs., 47 Mont. 537 et seq., 134 Pac. 291; State ex rel. Darling v. Board of County Commrs., 50 Mont. 435, 148 Pac. 314.

Editorial Notes.

Validity of statute creating new county only on ratification of voters within territory affected. Ann. Cas. 1914C, 626.

LOCATION OF COUNTY SEATS.*

"An act to provide for the designation of temporary county seats and for the location of permanent county seats in new counties or in counties in which the permanent county seat has not been located."

Chapter 135, Laws 1911, page 378.

Location of County Seats on Creation of New County.

Section 1. Whenever a county is created hereafter in this state by legislative enactment, it shall be the duty of the persons appointed to the office of county commissioners of such county by the act creating it, to meet at some place in the county, to be agreed upon by a majority of said county commissioners, within fifteen days after the passage of the act creating the county and then and there organize as a Board of County Commissioners by electing one of their number chairman.

The person appointed to the office of county clerk in the bill creating the county shall be notified in writing by the county commissioners or some one of them of the time and place of said meeting and he must attend the meeting and act as the clerk thereof and keep a record of the proceedings. If no person is appointed to the office of county clerk, by the act creating the county, the commissioners shall at such meeting select some person qualified to hold office of county clerk, to act as clerk of such meeting. [Approved March 9, 1911; Laws 1911, c. 135, p. 378.]

Designation of Temporary County Seat—Special Election.

Section 2. Immediately after the organization of the Board of County Commissioners, as provided in section 1 of this act, said board shall by a resolution, spread upon the minutes of its proceedings, designate some place within said county as and to be the temporary county seat until the permanent county seat shall be located as hereinafter in this act provided. The place so designated shall be the temporary county seat of said county until the permanent county seat is located by the electors of said county at the general election to be held on the first Tuesday after the first Monday of November of the next even-numbered year after the creation of the county, or at a special election as hereinafter provided.

In the event of a majority of the county commissioners failing to agree upon the location of the temporary county seat, then each county commis-

*See preceding chapter.

sioner shall write the name of the place he favors as the temporary county seat on a slip of paper and said slips be inclosed in envelopes of the same size, color and texture, and shall be deposited in a box or other suitable receptacle and the county clerk, in the presence of said commissioners shall draw out one of the said slips. Thereupon the county commissioners shall by resolution, spread upon the minutes, declare the place named on the slip so drawn by the county clerk, to be the temporary county seat of said county.

At said first general election after the creation of the county, it shall be the duty of the Board of County Commissioners and county clerk to have separate official ballots printed and distributed for the use of the electors at said election; which ballots shall be in the form and contain the same matter as the ballots provided for in section 8 of this act; and the provisions of section 9 of this act shall apply to and govern the manner of voting and of canvassing said ballots and the Board of County Commissioners shall declare the result of such election and the location of the permanent county seat and said county seat shall be located in the manner and according to the provisions of said section 9 of this act;

Provided, however, that at any time within six months after the passage of an act creating a new county, a petition or petitions may be filed with the county clerk of the Board of County Commissioners of such county asking the board to submit the question of the location of the . . . the permanent county seat to the electors of the county at a special election to be called and held in the manner hereinafter in this act provided. Said petition or petitions must contain in the aggregate the names of at least one hundred taxpayers, whose names appear upon the assessment-books containing the last assessment of the property situated in such new county and whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein.

The petition or petitions when filed with the board must also have certificates attached thereto from the county clerk of the county in which the person or persons signing the petition resided before the creation of the new county certifying that the names of the person signing said petition or petitions appear in the last assessment-books of his county and also in the registration-books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county. [Approved March 9, 1911; Laws 1911, c. 135, p. 379.]

Proceedings After Petition for County Seat Election.

Section 3. Upon filing said petition or petitions duly certified to as provided in section 2 of this act, with the county clerk of the new county he must immediately notify the chairman of the Board of County Commissioners who, upon receipt of such notice, must call a meeting of the board to be held within ten days after the filing of said petition, for the purpose of considering the same. If the board at such meeting finds that said petition conforms to the requirements of and is in accordance with the provisions of section 2 of this act, it shall, at said meeting by a resolution spread upon its minutes, call a special election of the qualified electors of said county for the purpose of voting upon the question of the location of the permanent county seat.

Said election shall be held on Tuesday and not less than forty nor more than sixty days after the date of calling the same. The board must issue

an election proclamation containing a statement of the time of the election and the question to be submitted. A copy of this proclamation must be published in some newspaper printed in the county, if any, and posted at each place of election at least ten days before the election. [Approved March 9, 1911; Laws 1911, c. 135, p. 380.]

Division of County into Registration and Polling Precincts.

Section 4. At the meeting of the board at which the special election is called for the purpose of locating the permanent county seat, the board shall by resolution spread upon its minutes, divide the county into registration districts and establish polling precincts in the manner provided by law. It must also, at such meeting, make an order designating the house or place within each precinct where the election shall be held. It must also at the same session of the board appoint registry agents for the several registration districts established by it who must possess the qualifications required by law for registry agents. The county clerk must furnish the said registry agents with books, blanks, and other stationery required for the proper performance of their duties. [Approved March 9, 1911; Laws 1911, c. 135, p. 381.]

Registration of Voters.

Section 5. The period for the registration of electors shall be between the hours of 9 A. M. and 9 P. M., on all legal days from 9 A. M. of the fourth Monday prior to the date of said election to 9 P. M. of the second following Saturday. It shall be the duty of each registry agent to publish and post notices of the time and places of registration in the manner provided by law for the publication of notices of registration for general elections. No person shall be entitled to register and vote at such special election unless he is a qualified voter of the state of Montana of the age of twenty-one years and will have been a resident of Montana one year and of the territory embraced within the boundaries of the new county for a period of one hundred and eighty days on the day next preceding the day of such election and also takes and subscribes to the oath provided in section 479, Revised Codes of Montana.

The general election laws of this state governing the registration of electors and defining the duties of the registry agents shall apply to and govern the registration of electors in elections held under this act in so far as the same do not conflict herewith. [Approved March 9, 1911; Laws 1911, c. 135, p. 381.]

Judges of Election—Ballots, Books and Records.

Section 6. At the same meeting of the Board of County Commissioners at which the special election for the location of the permanent county seat is called, the board shall appoint three judges of election for each precinct in the county who shall act as the judges at said election. It shall be the duty of the county clerk to have printed and distributed to the judges of election the necessary ballots, the form of which shall be as provided in sections 2, 8 and 10 hereof, and also supply the judges with the necessary books, records, stationery and ballot-boxes required to hold such election in the manner provided by law. [Approved March 9, 1911; Laws 1911, c. 135, p. 382.]

Applicability of General Election Laws.

Section 7. The judges appointed for such special election must qualify as required by the general election law and the polls must be opened and closed, the voting done, the ballots counted, returns made to the Board of County Commissioners, and all other matters connected with said election, carried on and conducted in accordance with and as provided by Part III, Title II, of the Political Code of Montana and amendments thereto governing elections in this state. [Approved March 9, 1911; Laws 1911, c. 135, p. 382.]

Form of Ballot.

Section 8. The form of the ballots used at such elections shall be as follows: There shall be a stub across the top of each ballot and separated therefrom by a perforated line. The part above the perforated line, designated as the stub, shall extend the entire width of the ballot and shall have a depth of not less than two inches. Upon the face of the stub there shall be printed in what is known as brevier capitals the following instructions:

"To vote this ballot the elector will write in the blank space on the ballot the name of the town or place at which he desires the permanent county seat to be located."

The ballot below the perforated line shall be in the following form:

"For the permanent county seat of county my choice is";
(here insert name of county)

Provided, that any person, who from any cause, is unable to write, he may have one of the judges in the presence of another judge, write his choice on the ballot. [Approved March 9, 1911; Laws 1911, c. 135, p. 382.]

Canvass of Returns—Result of Election.

Section 9. When the name of a town or place in a county shall be so inserted in the blank space on such ballot by an elector and the ballot has been cast as provided by law, the same shall be deemed a vote for the designated town or place as the location of the permanent county seat of said county. The Board of County Commissioners of said county shall canvass the returns of said election in the manner provided by law for the canvassing of election returns and upon such canvassing of the returns the town or place found to have received a majority of all votes cast on such questions shall be declared by the board the permanent county seat of the county. The order declaring the result of such election shall be entered of record in the minutes of the proceedings of the Board of County Commissioners by the county clerk and from the date of the declaration of the results of the election the town or place selected shall be and remain until lawfully changed in the manner provided by law, the permanent county seat of such county. Within ten days after the declaration of the result of such election all records and county offices of the county, if elsewhere located, must be moved to and remain at the place declared the permanent county seat. [Approved March 9, 1911; Laws 1911, c. 135, p. 383.]

Re-election in Case of Failure to Select County Seat.

Section 10. If no town or place receives a majority of all votes cast on such question, then the town or place receiving the highest number of votes shall be declared by the board and immediately become the tem-

porary county seat of the county, and at the next general election the two towns or places receiving the greatest number of votes at said first election shall be the candidates for the permanent county seat. At said next general election the county clerk shall have separate ballots in the form provided for in section 8 of this act printed and distributed as provided by law containing the names of said candidates for the permanent county seat. On the stub of such ballots shall be printed the following instructions:

"To vote this ballot the elector will place an X in the square before the name of the town he intends to vote for."

The form of such ballots below the perforated line shall be as follows:

☐ for the permanent county seat.

☐ for the permanent county seat.

Of said towns or places the one receiving a majority of all the votes cast on such question shall be declared the permanent county seat and the Board of County Commissioners must canvass the returns and declare the result, and the county seat must be located in accordance with the provisions of this act. [Approved March 9, 1911; Laws 1911, c. 135, p. 383.]

Applicability of General Laws to New Counties and Officers.

Section 11. All laws of general nature applicable to the several counties of the state of Montana and to the officers thereof and to their powers and duties shall be applicable to a new county and the officers thereof from and after the creation of the county, except as otherwise provided in this act or the act creating the county. [Approved March 9, 1911; Laws 1911, c. 135, p. 384.]

Election of Permanent County Seats—Elections.

Section 12. Any county heretofore created, in which the permanent county seat has been located by valid election held for the purpose of locating the permanent county seat of said county, may have a special election, for the purpose of voting on such question, called and held under the provisions of this act or if no special election is held for such purpose, then said question shall be submitted by the county commissioners at the next general election after the passage of this act and in the manner provided herein for the submission of such questions at general elections; provided, however, that no special election shall be called for the purpose of submitting such question unless a petition or petitions containing in the aggregate the names of one hundred tax-paying electors of such county whose names appear upon the last assessment-book and also on the last registration-books of said county are filed with the clerk of the Board of County Commissioners within six months after the passage and approval of this act.

Upon the filing of such petition or petitions within said time, containing the requisite number of tax-paying electors, which must be ascertained by the board from the records of said county, said board must immediately call such special election, as herein provided.

If registration districts and polling precincts have already been established in said county, they shall remain the same for such special election but a new registration shall be had and said special election conducted and the result determined as in this act provided.

The provisions of this section shall not apply in any case where there has been a permanent county seat located and maintained for a period of three (3) years from the date immediately subsequent to the date of the approval of this act, whether the same was located by a legal election, or otherwise.

Section 13. This act shall be in full force and effect from and after its passage and approval by the Governor. [Approved March 9, 1911; Laws 1911, c. 135, p. 384.]

Prior to the passing of this measure there was no general law whereby a so-called temporary county seat could be located, changed or removed, so that a temporary

county seat, once designated, became, in fact, permanent. State ex rel. Geiger v. Long, 43 Mont. 412, 117 Pac. 104.

RECORDS AND FISCAL AFFAIRS ON CHANGE OF BOUNDARIES.

Chapter 36, Laws 1911, page 65.

An act to provide for procuring public records, the distribution of debts and assets, and pertaining to the collection of taxes on annexing territory to counties and municipalities, detached from other counties and municipalities.

Be it enacted by the Legislative Assembly of the State of Montana:

Transcript of Records When Territory Detached from One Municipality and Added to Another.

Section 1. When any territory shall be detached from any county, city or town in this state and annexed to any other county, city or town, it shall be the duty of the proper officer of such county, city or town to which said territory so detached shall be annexed, to demand from the proper officer of the county, city or town having custody of the public records of the territory so detached, a transcript of all public records pertaining to such territory; and it shall be the duty of such officer from whom they shall be demanded, to furnish such authenticated transcripts of all such records in his office which shall be paid for after they shall be so furnished, by the county, city or town to which said territory so detached shall be annexed.

Apportionment of Indebtedness and Credit Where Territory is Detached and Annexed.

Section 2. When any territory shall be detached from any county, city or town of this state and the same shall be annexed to any other county, city or town herein, such county, city or town to which the same shall be annexed, shall be liable to the county, city or town from which the territory was so detached, for its just share of liabilities and indebtedness, and shall receive a just share of the credits from the county, city or town from which the same shall have been detached, which shall be apportioned by ascertaining what ratio the portion detached bears to the territory from which the same was detached, and the last prior assessment shall be used as a basis in determining the same.

Collection of Taxes in Territory Taken in One Municipality and Added to Another.

Section 3. When any territory shall be detached from any county, city or town in this state and be annexed to any other county, city or

town therein, it shall in no manner invalidate or interfere with the collection of taxes in such territory, and they shall be collected by and the returns made to the county to which said territory is attached in the manner provided by law for levying and collecting taxes.

Section 4. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved February 20, 1911.

SUSPENSION OF SENTENCE.

Chapter 21, Laws 1913, page 20.

"An act to provide that persons convicted of certain offenses may be given the benefits of a suspended sentence, and providing for the supervision and care of such persons."

Suspension of Sentence—When may be Ordered.

Section 1. In all prosecutions for crimes or misdemeanors, except as hereinafter provided, where the defendant has pleaded or been found guilty, or where the court or magistrate has power to sentence such defendant to any penal or other institution in this state, and it appears that the defendant has never before been imprisoned for crime either in this state or elsewhere (but detention in an institution for juvenile delinquents shall not be considered imprisonment), and where it appears to the satisfaction of the court that the character of the defendant and circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and where it may appear that the public safety does not demand or require that the defendant shall suffer the penalty imposed by law, said court may suspend the execution of the sentence and place the defendant on probation in the manner hereinafter provided. Nothing in this act contained shall in any manner affect the laws providing the method of dealing with the juvenile delinquents. [Approved February 14, 1913; Laws 1913, c. 21, p. 20.]

Editorial Notes.

Power of court in regard to suspension of sentence in criminal case. Ann. Cas. 1912B, 1192.

Persons Convicted of Felony not Entitled to Probation.

Section 2. No person convicted of murder, arson, burglary of an inhabited dwelling-house, incest, sodomy, rape without consent, assault with intent to rape or administering poison shall have the benefit of probation. [Approved February 14, 1913; Laws 1913, c. 21, p. 21.]

Effect of Probation.

Section 3. Whenever a sentence to any penal or other institution in this state has been imposed, but the execution thereof has been suspended and the defendant placed on probation, the effect of such order of probation shall be to place said defendant under the control and management of the State Board of Prison Commissioners and he shall be subject to the same rules and regulations as applied to persons paroled from said institutions after a period of imprisonment therein. [Approved February 14, 1913; Laws 1913, c. 21, p. 21.]

Duty of State Board of Prison Commissioners.

Section 4. It shall be the duty of the State Board of Prison Commissioners to furnish the clerk of courts of each county with blank forms setting forth the requirements and conditions used by them in the parole of prisoners of the several institutions, but amended so as to be applicable to cases of probation. [Approved February 14, 1913; Laws 1913, c. 21, p. 21.]

Release of Prisoner from Custody of Court.

Section 5. Whenever it is the judgment of the court that the defendant be placed upon probation and under the supervision of the State Board of Prison Commissioners, it shall be the immediate duty of the clerk of said court to make a full copy of the judgment of the court, with the order for the suspension of the execution of sentence thereunder and the reason therefor, and to certify the same to the State Board of Prison Commissioners, and to the institution to which said court would have committed the defendant but for the suspension of sentence. Upon entry in the records of the court of the order for such probation, the defendant shall be released from custody of the court as soon as the requirements and conditions fixed by the State Board of Prison Commissioners have been properly and fully met. [Approved February 14, 1913; Laws 1913, c. 21, p. 21.]

Rules and Regulations for Persons Released.

Section 6. The State Board of Prison Commissioners shall fix the rules and regulations governing all persons who may be released under the powers conferred by this act, and the said rules and regulations shall be administered and enforced by the traveling Parole Commissioner or his assistants, as directed by said State Board of Prison Commissioners. [Approved February 14, 1913; Laws 1913, c. 21, p. 22.]

Return of Prisoner to Confinement—Term of Sentence.

Section 7. Whenever a person placed upon probation, as aforesaid, does not conduct himself in accordance with the rules and regulations, as fixed by the State Board of Prison Commissioners, he shall be subject to arrest without warrant or other process, and shall be conveyed to and confined in the institution to which he would have been committed had he not been placed upon probation, and the said State Board of Prison Commissioners may forthwith terminate the probation of said person and shall forthwith notify the proper officers of said institution. In all cases of such termination of probation, the original sentence shall be considered as beginning upon the first day of imprisonment in the institution. [Approved February 14, 1913; Laws 1913, c. 21, p. 22.]

Discharge from Further Supervision.

Section 8. Whenever it is the judgment of the State Board of Prison Commissioners that a person on probation has satisfactorily met the conditions of his probation they shall cause to be issued to said person a final discharge from further supervision; provided that the length of such period of probation shall not be less than the minimum or more than the maximum term for which he might have been imprisoned. [Approved February 14, 1913; Laws 1913, c. 21, p. 22.]

Payment of Expenses.

Section 9. The expenses incident to the care and supervision of prisoners under the provisions of this act shall be paid out of the proper fund in the same manner as other expenses of the state penal institutions. [Approved February 14, 1913; Laws 1913, c. 21, p. 22.]

INDETERMINATE SENTENCES.

Chapter 14, Laws 1915, page 21.

“An act providing for indeterminate sentences of persons convicted of crime, and for the parole of such persons, and prescribing the duties of officials in connection therewith.”

Section 1. Whenever, after the passage and approval of this act, any person shall be found guilty of any crime or offense punishable by imprisonment in the state prison, except treason, murder in the first degree, rape by force, or administering poison to a human being with intent to kill, the court must, instead of fixing the punishment at a definite term, provide in the sentence and judgment that the defendant be confined in such prison for not less than a certain time, nor longer than a certain time, both the minimum and the maximum time shall be named in such judgment, and such minimum time shall not be less than the minimum time named in law prescribing punishment for such crime or offense nor shall the maximum time named in such judgment exceed the maximum punishment named in such law; provided that in any judgment under this act the minimum time shall not be less than six months. In all cases where the punishment is fixed by the jury the minimum and maximum time to be served shall be set forth in the verdict.

Section 2. Any person receiving an indeterminate sentence as provided in this act may, in the discretion of the Governor and State Board of Prison Commissioners, be paroled at any time after he shall have served in such prison the minimum time specified in such judgment.

Section 3. This act shall not have the effect of repealing or amending the provisions of chapter 21 of the Session Laws of the Thirteenth Legislative Assembly [§§ 9376a-9376i, herein], relating to suspending sentences, nor of amending existing laws relating to paroles except that any convict may be paroled after serving such minimum time, as in this act provided. [New section approved February 18, 1915; Laws 1915, c. 14, p. 21.]

TRAVELING PAROLE COMMISSIONER.

Chapter 13, Laws 1913, page 13.

“An act to create the office of State Traveling Parole Commissioner, define the duties of said commissioner and fix his compensation therefor.”

Be it enacted by the Legislative Assembly of the State of Montana:

Appointment of Parole Commissioner.

Section 1. There is hereby created the office of the State Parole Commissioner, which office shall be filled by a suitably qualified person to be appointed by the Governor. Said commissioner shall hold office for the period of four years, but shall be subject to removal by the Governor at any time for cause.

Duties and Authority Over Paroled Prisoner.

Section 2. It shall be the duty of said commissioner to co-operate with the warden of the State Penitentiary, and the superintendent of the State Reform School in recommending paroles for the inmates of said institution. Said officer shall also assist men and boys paroled from said institutions in securing employment in suitable places where they will be as far removed as possible from their old associates. It shall be the duty of said commissioner to assist said paroled prisoners in becoming law abiding citizens. He shall have general supervision and authority over said paroled prisoners and shall see that they report regularly to the proper authorities, and shall arrest and return to the proper place of confinement those who do not comply with all the terms upon which they shall have been paroled.

Salary and Expenses.

Section 3. Said State Parole Commissioner shall be paid the sum of two thousand (\$2,000) dollars per annum, and actual traveling expenses while engaged in the duties of his office. Said sums to be paid in the same manner as the salaries and traveling expenses of other state officers.

Section 4. All acts and parts of acts in conflict with this act are hereby repealed.

Section 5. This act shall be in force and take effect from and after its passage and approval by the Governor.

Approved February 10, 1913.

PRISON-MADE GOODS.

Chapter 32, Laws 1911, page 51.

An act to regulate the sale of goods, wares and merchandise within the state of Montana, known as prison made goods, and to provide penalties for the violation thereof.

Be it enacted by the Legislative Assembly of the State of Montana:

Goods to be Marked "Prison Made,"

Section 1. It shall hereafter be unlawful for any person engaged in the trade of buying and selling or of selling any goods, wares or merchandise or article or thing to knowingly exhibit or sell or offer for sale any goods, wares, merchandise, article or thing which shall have been produced or manufactured or made by convict labor in any prison, unless such goods shall have plainly stamped or marked thereon the words "prison made."

Dealing in Unmarked Goods a Misdemeanor.

Section 2. Any person or persons who shall knowingly sell or offer for sale any goods, wares or merchandise, article or thing produced, made or manufactured in any prison which said goods, wares, merchandise, article or thing shall not have stamped or marked thereon the words "prison made" shall, upon conviction thereof be deemed guilty of a misdemeanor and shall be punishable by a fine of not less than twenty-five dollars or more than three hundred dollars, or by imprisonment in the county jail of not less than thirty days or more than ninety days; or by both such fine and imprisonment.

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

Section 4. This act shall be in full force and effect from and after its passage and approval.

Approved February 17, 1911.

BONDS FOR TWINE FACTORY AT STATE PRISON.

Chapter 106, Laws 1915, page 233.

"An act to authorize the state of Montana to become indebted in excess of the constitutional limit, and to provide for the issuance of bonds in the name of the state for the establishment of twine factory at the state prison, erection of buildings, purchase of equipment and for raw material to be used in said factory."

Be it enacted by the Legislative Assembly of the State of Montana:

Limit of Bond Issue—Use of Proceeds.

Section 1. That the State Board of Examiners of the state of Montana is hereby authorized and empowered to issue bonds in the name of the state of Montana to an amount not exceeding two hundred and sixty-five thousand (\$265,000) dollars in excess of the constitutional limitation of indebtedness of one hundred thousand (\$100,000) dollars; provided, however, that bonds heretofore issued and now outstanding shall not be computed so as to in any manner interfere with the bond issue under the terms and provisions of this act to the full amount of two hundred and sixty-five thousand (\$265,000) dollars. That the money derived from the sale of said bonds is to be used for the erection of buildings at the State Penitentiary, to be used for the state prison twine factory at a cost not exceeding thirty thousand (\$30,000) dollars; the equipment of said factory at a cost not to exceed thirty-five thousand (\$35,000) dollars and for the purchase of raw material for use in the said factory not exceeding two hundred thousand (\$200,000) dollars, and for no other use.

Denominations of Bond—Interest—Redemption.

Section 2. That the bonds provided for in this act shall be issued in denominations of one thousand (\$1,000) dollars each, and shall become due in ten years from the date of issuance, and be redeemable and payable, at the option of the state, five (5) years from their date, or at any interest paying period, and they shall bear interest at the rate of four per cent (4%) per annum, payable semi-annually on the first days of June and December of each year at office of the state treasurer of the state of Montana.

Conditions of Bonds—Notice of Redemption.

Section 3. That each bond issued under the provisions of this act shall contain a condition substantially as follows:

"This bond is one of a series of state bonds of the denomination of one thousand (\$1,000) dollars, each of like tenor and date, numbered from one (1) to two hundred and sixty-five (265) inclusive, and aggregating the sum of two hundred and sixty-five thousand (\$265,000) dollars. The right is hereby reserved to redeem this bond at any regular interest paying period as stated herein by payment of the principal and interest in full to the date of redemption; provided, that not less than ten (10) days' notice

shall be given by the state treasurer in writing, or by publication of such intention on the part of the state to make redemption."

The form of notice and method of giving same shall be in accordance with the direction of the State Board of Examiners.

Tax Assessment—Use of Proceeds.

Section 4. That there shall be levied annually one-eighth ($\frac{1}{8}$) of a mill on the dollar on all taxable property in this state, which when collected by the county treasurer, shall be accounted for and paid over to the state treasurer to be by the state treasurer held in a separate fund designated as the "State Prison Twine Factory Bond Fund" and said fund shall be used exclusively for the payment of interest on such bonds and for the redemption thereof.

Form and Registry of Bonds—Interest Coupons.

Section 5. That the bonds shall be in such form as shall be prescribed by the Attorney General and approved by the State Board of Examiners, and shall be signed by the members of said board and issued under the great seal of the state of Montana, and shall be registered in the office of the State Treasurer. Said bonds shall have interest coupons attached covering the interest due semi-annually, and shall have the lithographed facsimile signature of the members of the State Board of Examiners affixed thereto.

Sale of Bonds.

Section 6. That the bonds herein authorized and provided for shall be disposed of by the State Board of Examiners in such manner as seems for the best interests of the state in carrying out the terms and provisions of this act and none of said bonds shall be sold for less than its face value.

Election—Ballots and Voting.

Section 7. That each county clerk in this state, at the next general election, shall have separate ballots printed and furnished to each precinct in his county in the same manner as regular ballots, to be used by the electors to vote upon the question herein submitted to them for approval. Said separate ballots shall have printed thereon the following:

"For the law authorizing a state bond issue of two hundred and sixty-five thousand dollars for twine factory."

"Against the law authorizing a state bond issue of two hundred and sixty-five thousand dollars twine factory."

The elector shall vote said ballot by making an (X) in the square in front of the proposition for which he desires to vote.

Section 8. This act shall be in full force and effect on and after its passage and approval.

Approved March 8, 1915.

PARTY NOMINATIONS BY DIRECT VOTE.

A bill to propose by initiative petition a law to provide for party nominations by direct vote.*

Be it enacted by the People of the State of Montana:

Construction of Law.

Section 1. Whenever the provisions of this law in operation prove to be of doubtful or uncertain meaning, or not sufficiently explicit in directions and details, the general laws of Montana, and especially the election and registration laws, and the customs, practice, usage, and forms thereunder, in the same circumstances or under like conditions, shall be followed in the construction and operation of this law, to the end that the protection of the spirit and intention of said laws shall be extended so far as possible to all primary elections, and especially to all primary nominating elections provided for by this law. If this proposed law shall be approved and enacted by the people of Montana, the title of this bill shall stand as the title of the law.

The primary election law does not contain any repealing provision, and only the general clause as to "acts and parts of acts inconsistent with," etc., which are declared to be repealed, that can give it an appear-

ance of implying any such provision; in this connection it is to be borne in mind that the courts do not favor repeals by implication. *State ex rel. Metcalf v. Wilman*, 49 Mont. 437, 143 Pac. 565.

Time for Holding Primary Elections.

Section 2. On the seventieth (70) day preceding any general election (not including special elections to fill vacancies, municipal elections in towns and cities, irrigation district and school elections) and which public officers in this state and in any district or county are to be elected, a primary nominating election shall be held in accordance with this law in the several election precincts comprised within the territory for which such officers are to be elected at the ensuing election, which shall be known as the primary nominating election, for the purpose of choosing candidates by the political parties, subject to the provisions of this law, for senator in Congress, and all other elective state, district and county officers, and delegates to any constitutional convention or conventions that may hereafter be called, who are to be chosen at the ensuing election wholly by electors within this state, or any subdivision of this state, and also for choosing and electing county central committeemen by the several parties subject to the provisions of this law.

Duty of County Clerk—Notice of Primary Elections.

Section 3. It shall be the duty of the county clerk, thirty days before any primary nominating election, to prepare printed notices of such election, and mail two of said notices to each judge and clerk of election in each precinct; and it shall be the duty of the several judges and clerks immediately to post said notice in public places in their respective precincts. Said notices shall be substantially in the following form:

*This act was initiated and passed by the people at the general election of November, 1912. See Laws 1913, pp. 569-589.

Primary Nominating Election Notice.

Notice is hereby given that on, the day of, 19..., at the, in the precinct of, in the county of, Montana, a primary nominating election will be held at which the (insert names of political parties subject to this law) will choose their candidates for state, district, county, precinct, and other officers, namely (here name the offices to be held, including a senator in Congress when the next legislative assembly is to elect a senator, delegates to any constitutional convention then called, and candidates for county central committeemen to be elected); which election will be held at 12 o'clock, noon, and will continue until 7 o'clock in the afternoon of said day.

Dated this day of, 19...

.....,
County Clerk.

Application of Law to Cities and Towns.

Section 4. The nomination of candidates for municipal offices by the political parties subject to the provisions of this law shall be governed by this law in all incorporated towns and cities of this state having a population of two thousand and upward as shown by the last preceding national or state census. All petitions by the members of such political parties for placing the names of candidates for nomination for such municipal offices on the primary nominating ballots of the several political parties shall be filed with the city clerk of said several towns and cities, and it shall be the duty of such officers to prepare and issue notices of election for such primary nominating elections in like manner as the several county clerks perform similar duties for nominations by such political parties for county offices at primary nominating elections. The duties imposed by this law on the county clerk at primary nominating elections are hereby, as to said towns and cities, designated to be the duties of the city clerk of said towns and cities as to primary nominating elections of the political parties subject to the provisions of this law; provided, that in cities and towns the primary nominating election shall be held on the fourteenth day preceding their municipal elections. Under the provisions of this law the lawfully constituted legislative and executive authorities of cities and towns within the provisions of this section shall have such power and authority over the establishment of municipal voting precincts and wards, municipal boards of judges and clerks of election and other officers of their said municipal elections, and other matters pertaining to municipal primary nominating election required for such cities and towns by this law, that such legislative and executive authorities have over the same matters at their municipal elections for choosing the public officers of said cities and towns.

Counting of Ballots.

Section 5. Immediately after the closing of the polls at a primary nominating election, the clerks and judges of election shall open the ballot-boxes at each polling place and proceed to take therefrom the ballots. Said officers shall count the number of ballots cast by each political party, at the same time bunching the tickets cast for each political party together in separate piles, and shall then fasten each pile separately by means of a brass clip, or may use any means which shall effectually fasten each pile together at the top of each ticket. As soon as the clerks and judges have sorted and fastened together the ballots separately for each political party, then

they shall take the tally sheets provided by the county clerk and shall count all the ballots for each political party separately until the count is completed, and shall certify to the number of votes for each candidate for nomination for each office upon the ticket of each party. They shall then place the counted ballots in the box. After all have been counted and certified to by the clerks and judges they shall seal the returns for each of said political parties in separate envelopes, to be returned to the county clerk.

Form of Tally Sheets—Canvass of Votes.

Section 6. Tally sheets for each political party having candidates to be voted for at said primary nominating election shall be furnished for each voting precinct by the county clerk, at the same time and in the same manner that the ballots are furnished and shall be substantially as follows:

“Tally sheet of the primary nominating election for (name of political party) held at precinct, in the county of on the day of, 19...

The names of the candidates shall be placed on the tally sheets and numbered in the order in which they appear on the official and sample ballots, and in each case shall have the proper political party designated at the head thereof.

The following shall be the form of the tally sheets kept by the judges, and clerks of the primary nominating election under this law, containing the number and name of each person voted for, the particular office for nomination to which each person was voted for, the total number of votes cast for each candidate for nomination. The tally or count as it is kept by each of the clerks shall be audibly announced as it proceeds, and shall be kept in the manner and form as follows:

No.	Name of Candidate.	Office.	Total Vote Received.	No.	Tally 5.	No.	Tally 10.	No.	Tally 15
12	12	.....	12	.....	12	.....
13	13	.....	13	.....	13	.....
14	14	.....	14	.....	14	.....

The columns for the numbers 12, 13, 14, etc., shall not be over three-eighths of an inch wide. The columns for the tallies shall be three-eighths of an inch wide, the lines shall be three-eighths of an inch apart; every ten lines the captions of the columns shall be reprinted between double-ruled lines in bold-faced small pica, and all figures shall be printed in bold-faced small pica. The tally sheets shall conclude with the following form of certificate:

We hereby certify that at the above primary nominating election and polling place each of the foregoing named persons received the number of votes set opposite his name, as above set forth, for the nomination for the office specified.

....., Chairman., Clerk.
 (Who kept this sheet.)
 Judge., Clerk.
 Judge., Clerk.”
 (Who kept the other sheet.)

During the counting of the ballots each clerk shall, with pen and ink, keep tally upon one of the above tally sheets, of each political party, and shall total the number of tallies and write the total in ink immediately to the right of the last tallies for each candidate, and also in the columns headed "total vote," and shall prepare the certificate thereto above indicated; and immediately upon the completion of the count, all the clerks shall sign the tally sheets, and each of them shall certify which sheets were kept by him; and the chairman and the judges, being satisfied of the correctness of the same, shall then sign all of said tally sheets. The clerks shall then prepare a statement of that portion of the tally sheets showing the number and name and political party of each candidate for nomination and the office and total votes received by each in the precinct, and shall prepare the certificate thereto, which statement shall be signed by the judges and clerks who complete the count, and shall be immediately posted in a conspicuous place on the outside of said polls, there to remain for ten days.

Poll-books and Tally Sheets to be Sealed and Returned.

Section 7. Immediately after canvassing the votes in the manner aforesaid, the judges and clerks who complete the count, before they separate or adjourn shall inclose the poll-books in separate covers and securely seal the same. They shall also inclose the tally sheets in separate envelopes and seal the same securely. They shall also envelope all the ballots fastened together, as aforesaid, and seal the same securely; and they shall be in writing, with pen and ink, specify the contents, and address each of said packages upon the outside thereof to the county clerk of the county in which the election precinct is situated. These sealed packages of counted ballots shall be marked on the outside, showing what numbers are contained therein, but once sealed they are not to be opened by any one until so ordered by the proper court. When the count is completed, the ballots counted and sealed, and enveloped and marked for identification as aforesaid, shall be packed in the two ballot-boxes, and nothing else shall be put into the boxes. The boxes shall then be locked, and the official seal of the board shall be posted over the keyhole and over the rim of the lid of the box, so that the box cannot be opened without breaking the seal. Thereafter neither the county clerk nor the canvassers making the abstracts of the votes shall break the said seals upon the ballot-boxes, nor shall anyone break the seals on the boxes or the ballots, except upon the order of the proper court in cases of contest, or upon the order of the county board when the boxes are needed for the ensuing election.

Political Party Nominations Made Exclusively as Herein Provided.

Section 8. Every political party shall nominate all its candidates for public office under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 521, of the Revised Codes of Montana, 1907. Every political party and its regularly nominated candidates, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any words of the name of any other political party or organization than of that by which he is nominated. No independent or nonpartisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy. The names of candidates for

public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing election as the only candidates of the respective political parties for such public office in like manner as the names of the candidates nominated by other methods are required to be printed on such official ballots.

Petitions for Nomination to be Filed.

Section 9. Before or at the time of beginning to circulate any petition for nomination to any office under this law, the person who is to be a candidate for such nomination shall send by registered mail, or otherwise, to the Secretary of State, or the county clerk or city clerk, a copy of his petition for nomination, signed by himself; and such copy shall be filed and shall be conclusive evidence for the purpose of this law that said elector has been a candidate for nomination by his party. All nominating petitions and notices pertaining to state or district offices to be voted for in more than one county, and for judges of the district court, shall be filed in the office of the Secretary of State; for county offices and district offices to be voted for in one county only, shall be filed with the county clerk; and for all city offices, in the office of the city clerk.

Form of Petition for Nomination.

Section 10. Any qualified elector who has filed his petition shall have his name printed on the official nominating ballot of his party as a candidate for nomination for any office at any primary nominating election held under the provisions of this act, if there shall be filed in his behalf a petition signed as herein required, and substantially in the following form:

To (address of the officer with whom the petition is to be filed), and to the members of the party and the electors of (state), counties of comprising the district, (county), (city), (as the case may be), in the state of Montana—

I, reside at, and my postoffice address is If I am nominated for the office of at the primary nominating election to be held in the (state of Montana), (district), (county), (city), the day of, 19.., I will accept the nomination and will not withdraw, and if I am elected I will qualify as such officer.

If I am nominated and elected I will, during my term of office (here the candidate, in not exceeding one hundred words, may state any measures or principles he especially advocates, and the form in which he wishes it printed after his name on the nominating ballot, in not exceeding twelve words).

In case of an elector seeking nomination for the office of senator or representative in the legislative assembly, he may include one of the following two statements in his petition; but if he does not do so, the Secretary of State or county clerk, as the case may be, shall not on that account refuse to file his petition:

Statement No. 1.

I further state to the people of Montana, as well as to the people of my legislative district, that during my term of office I will always vote for that candidate for United States senator in Congress who has received the highest number of the people's votes for that position at the general election next preceding the election of a senator in Congress, without regard to my individual preference.

.....,
(Signature of the candidate for nomination.)

If the candidate shall be unwilling to sign the above statement, then he may sign the following statement as a part of his petition:

Statement No. 2.

During my term of office I shall consider the vote of the people for United States senator in Congress as nothing more than a recommendation, which I shall be at liberty to wholly disregard, if the reason for doing so seems to me to be sufficient.

.....,
(Signature of the candidate for nomination.)

Every such petition shall be signed as above by the elector seeking such nomination. There shall be a separate leaf or sheet signed as above on every such petition for each precinct in which it is circulated. After the above, and on a separate sheet or sheets, shall be the following petition:

To (Secretary of State for Montana), or (to, the county clerk for the county of, Montana), or (to, city clerk of), (as the case may be).

We, the undersigned members of the party and qualified electors and residents of precinct, in the county of, state of Montana, respectfully request that you will cause to be printed on the official nominating ballot for the party, at the aforesaid primary nominating election, the name of the above signed (name of applicant), as a candidate for nomination to the office of (title of office) by said party.

Name.	Postoffice Address.	Street and Number, if any.	Precinct.
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Form.

Name of, Postoffice Address, Street and Number, if any, precinct

Each and every leaf or sheet of said petition containing signatures shall be verified in substantially the following form by one or more of the signatures of said petition:

State of Montana, }
County of, } ss.

I,, being first duly sworn, say: I am personally acquainted with all the persons who have signed this sheet of the foregoing petition, and I personally know that their signatures thereon are genuine; and I believe that their postoffice address and residence are correctly stated and that they are qualified electors and members of the party.

.....,
(Signature of affiant.)

Subscribed and sworn to before me this day of, 19...

.....,
(Signature and title of officer before whom oath is made.)

Percentage of Electors Required on Petition.

Section 11. The vote cast by a political party in each voting precinct for representative in Congress at the last preceding general election shall be the basis on which the percentage for petitions shall be counted. In the case of any political party not represented by any candidates for any office on the ballot at the last preceding general election, nomination papers must

be signed by as many voters as are required in the case of the candidates of the party requiring the least numbers of signatures entitled, as herein provided, to a place on the ballot at such primary. If the nomination is for a municipal office, or for an office to be voted for in only one county, the necessary number of signers shall include electors residing in at least one-fifth of the voting precincts of the county, municipality or district; if it be a state or district office, and the district comprises more than one county, the necessary number of signers shall include electors residing in each of at least one-eighth of the precincts in each of at least two counties in the district; if it be an office to be voted for in the state at large, the necessary number of signers shall include electors residing in each of at least one-tenth of the precincts in each of at least seven counties of the state; if it be an office to be voted for in a congressional district, the necessary number of signers shall include electors residing in at least one-tenth of the precincts in each of at least one-fourth of the counties in such district. The number of signers required on every such petition shall be at least two per cent of the party vote in the electoral district as above stated; provided, that the whole number of signers required on a nominating petition under the provisions of this law for any office to be voted for in the state at large, or in a congressional district, shall not exceed one thousand, nor in any other case shall the whole number required exceed five hundred signers. All the leaves or sheets making one petition shall be fastened together before they are forwarded to the proper officers for filing. There shall not be in any petition the name of more than one candidate for nomination. Any elector may sign more than one nominating petition required by this law for the same office. It shall be unlawful for any person to sign another person's name to any petition required by this law. It shall be unlawful for any person to sign any nominating petition required by this law unless he is a qualified elector. Any names or signatures placed on any petition in violation of the provisions of this law shall not be counted in computing the number of signers necessary to make the same a valid and effective petition.

Qualification of Petitioners.

Section 12. No person who is not a qualified elector shall be qualified to join in signing any petition for nomination, or to vote at said primary nominating election. But this shall not be construed to prevent any member of any party from signing a petition for the nomination of any independent or nonpartisan candidate after the primary nominating election, nor shall it be construed to prevent any qualified elector from signing petitions for more than one candidate for the same office on one party ticket.

Time for Filing Petitions for Nominations.

Section 13. All petitions for nomination under this act for offices to be filled by the state at large, or by any district consisting of more than one county, and nominating petitions for judges of district courts in districts consisting of a single county, shall be filed in the office of the Secretary of State not less than twenty days before the date of the primary nominating election; and for other offices to be voted for in only one county, or district or city, every such petition shall be filed with the county clerk or city clerk, as the case may be, not less than fifteen days before the date of the primary nominating election.

"Register of Candidates."

Section 14. The county clerk, Secretary of State, and the city clerk of towns and cities having two thousand inhabitants or more, shall keep a book entitled "Register of Candidates for Nomination at the Primary Nominating election," and he shall enter therein, on different pages of the book for the different political parties subject to the provisions of this law, the title of the office sought and the name and residence of each candidate for nomination at the primary nominating election; the name of his political party; the date of receiving the first copy of his petition signed by the candidate; the words he wishes printed after his name on the nominating ballot, if any; the date of receiving his petition; the number of signatures thereon, and the number of signatures required to make a valid and sufficient petition for nomination to said office by his political party, and such other information as may aid him in arranging his official ballot for said primary nominating election immediately after the canvass of votes at a primary nominating election is completed, the county clerk, Secretary of State, or city clerk, as the case may be, shall enter in his book marked "Register of Nominations," the date of such entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

Register of Candidates is Public Record—Disposition of Poll-books, Tally Sheets, Ballots, etc.

Section 15. Such registers of candidates for nomination, and of nominations and petitions, letters and notices, and other writings required by law, as soon as filed, shall be public records, and shall be open to public inspection under proper regulations; and when a copy of any such writing is presented at the time the original is filed, or at any time thereafter, and a request is made to have such copy compared and certified, the officers with whom such writing was filed shall forthwith compare such copy with the original on file, and, if necessary, correct the copy and certify and deliver the copy to the person who presented it on payment of his lawful fees therefor. All such writings, poll-books, tally sheets, ballots, and ballot stubs pertaining to primary nominating elections under the provisions of this act shall be preserved as other records are for two years after the election to which they pertain, at which time, unless otherwise ordered or restrained by some court, the county clerk shall destroy the ballots and ballot stubs, by fire, without any one inspecting the same.

Notice of Death or Withdrawal.

Section 16. The provisions of sections 529 and 530, Revised Codes of Montana, 1907, shall apply to nominations, or petitions for nominations, made under the provisions of this law, in case of the death of the candidate or his removal from the state or his county or electoral district before the date of the ensuing election, but in no other case. In case of any such vacancy by death or removal from the state, or from the county or electoral district, such vacancy may be filled by the committee which has been given power by the political party or this law to fill such vacancies substantially in the manner provided by sections 529 and 530, Revised Codes of Montana, 1907.

Arrangement and Notice of Nominations.

Section 17. Not more than twenty days and not less than seventeen days before the day fixed by law for the primary nominating election the

Secretary of State shall arrange, in the manner provided by this law, for the arrangement of the names and other information upon the ballots, all the names of and information concerning all the candidates for nomination contained in the valid petitions for nomination which have been filed with him in accordance with the provisions of this law, and he shall forthwith certify the same under the seal of the state, and file the same in his office, and make and transmit a duplicate thereof by registered letter to the county clerk of each county in the state, and he shall also post a duplicate thereof in a conspicuous place in his office, and keep the same posted until after said primary nominating election has taken place. In case of emergency the Secretary of State may transmit such duplicate by telegraph.

Arrangement of Ballots and Notice.

Section 18. Not more than fifteen days and not less than twelve days before the day fixed by law for the primary nominating election, the county clerk of each county, or the city clerk of each city, as the case may be, subject to the provisions of this law, shall arrange in the manner provided by this law for the arrangement of the names and other information concerning all the candidates and parties named in the valid petitions for nomination which have been filed with him and those which have been certified to him by the Secretary of State, in accordance with the provisions of this law; and he shall forthwith certify the same under the official seal of his office, and file the same in his office, and make and post a duplicate thereof in a conspicuous place in his office, and keep the same posted until after the primary nominating election has taken place; and he shall forthwith proceed and cause to be printed, according to law, the colored sample ballots and the official voting ballots required by this law.

Ballots Printed and Furnished by County Clerk.

Section 19. All blanks, ballots, poll-books and other supplies to be used at any primaries shall be provided, and all expenses necessarily incurred in the preparation for, or conducting such primaries shall be paid out of the treasury of the county in the same manner and by the same officers as in the case of elections. Not later than one day next preceding any primary the county clerk must furnish one of the judges of the primaries in each precinct with a copy of the official register and a check list for the precinct.

Official Ballot—Form of—Manner of Voting.

Section 20. At all primaries there shall be a ballot made up of the several party tickets herein provided for, each of which shall be printed on a separate sheet of white paper, all of which shall be of the same size, and all shall be securely fastened together at the top and folded, provided that there shall be as many separate tickets as there are parties entitled to participate in said primary election.

The names of all candidates shall be arranged alphabetically according to surnames, under the appropriate title of the respective officers, and under the proper party designation upon the party ticket. If any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written, this ballot shall be counted for such person only as a candidate of the party upon whose ticket his name is written, and shall in no case be

counted for such person as a candidate upon any other ticket. In case any person is nominated, as provided in this act, upon more than one ticket, he shall forthwith file with the Secretary of State or county clerk a written declaration indicating the party designation under which his name is to be printed on the official ballot, for the primary election, failing in which his name shall be printed upon the party ticket for which the greater number of nominating signatures have been filed for such candidate and no candidate shall have his name printed on more than one ticket. The ballots with the indorsements shall be printed on white paper in substantially the form of the Australian ballot used in general elections, except that the candidates of each party shall be printed on a separate sheet. After preparing his ballot, the elector shall detach the same from the remaining tickets and fold it so that its face will be concealed and the official stamp thereon seen. The remaining tickets attached together shall be folded in like manner by the elector who shall thereupon, without leaving the polling place, vote the marked ballot forthwith, and deposit the remaining tickets in the separate ballot-box to be marked and designated as the blank ballot-box. Immediately after the canvass the judges of election shall, without examination, destroy the tickets deposited in the blank ballot-box.

Official Ballots and Sample Ballots—Number of.

Section 21. There shall be provided and furnished at each primary nominating election for each election precinct for each voter at least two official ballots intended to be voted, and a like number of the colored sample ballots. The sample ballots shall be duplicate impressions of the official ballots to be voted, but in no case shall they be white, nor shall the sample ballots have perforated stubs, nor shall they have the same margin, either at top or sides or bottom, as the official voting ballots have, or nearer thereto than twelve points. These colored sample ballots shall be furnished as soon as printed, at any time before the primary nominating election by the respective county or city clerks in reasonable quantities, to all electors applying for the same; and on the day of said election, under the direction and control of the judges at each polling place, said colored sample ballots shall be given in proper quantities to all electors applying for them.

Nomination of United States Senator.

Section 22. At all general primary nominating elections next preceding the election of a senator in Congress by the legislature of Montana there shall be placed upon the official primary nominating election ballots, by each of the county clerks and clerks of the county board, the names of all candidates for the office of senator in Congress, for whose nominations petitions have been duly made and filed under the provisions of this law, the votes for which candidates shall be counted and certified to by the election judges and clerks in the same manner as the votes for other candidates; and records of the vote for such candidates shall be made out and sworn to by the board of canvassers of each county of the state and returned to the Secretary of State at the time and in like manner as they shall transmit other records and returns required by this law.

Canvass of Returns.

Section 23. On the third day after the close of any primary nominating election, or sooner if all the returns be received, the county clerk, taking to his assistance two justices of the peace of the county of different

political parties, if practicable, shall proceed to open said returns and make abstracts of the votes. Such abstracts of votes for nominations for Governor and for senator in Congress shall be on one separate sheet for each political party, and shall be immediately transmitted to the Secretary of State in like manner as other election returns are transmitted to him. Such abstract of votes for nomination of each party for Lieutenant-Governor, Secretary of State, Attorney General, State Auditor, Superintendent of Public Instruction, Railroad Commissioners, clerk of the supreme court, State Treasurer, justices of the supreme court, members of congress, judges of the district court, and members of the legislative assembly, who are to be nominated from a district composed of more than one county, shall be on one sheet, separately for each political party, and shall be forthwith transmitted to the Secretary of State, as required by section 24 of this act. The abstract of votes for county and precinct offices shall be on another sheet separately for each political party; and it shall be the duty of said clerk immediately to certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination as candidates for members of the legislative assembly, county, and precinct offices, respectively, and to notify by mail each person who is so nominated; provided, that when a tie shall exist between two or more persons for the same nomination by reason of said two or more persons having an equal and the highest number of votes for nomination by one party to one and the same office, the county clerk shall give notice to the several persons so having the highest and equal number of votes to attend at his office at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared nominated by his party; and said clerk shall forthwith enter upon his register of nominations the names of the persons thus duly nominated, in like manner as though he had received the highest number of the votes of his party for that nomination; and it shall be the duty of the county clerk of every county, on receipt of the returns of any general primary nominating election, to make out his certificate stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the county board of county commissioners at its next term, and the said board shall order the compensation aforesaid to be paid out of the county treasury. In all primary nominating elections in this state, under the provisions of this law, the person having the highest number of votes for nomination to any office shall be deemed to have been nominated by his political party for that office.

Duties of County Clerk After Canvass of Vote.

Section 24. The county clerk, immediately after making the abstracts of votes given in his county, shall make a copy of each of said abstracts and transmit it by mail to the Secretary of State, at the seat of government; and it shall be the duty of the Secretary of State, in the presence of the Governor and the State Treasurer, to proceed within fifteen days after the primary nominating election, and sooner, if all returns be received, to canvass the votes given for nomination for Governor, senator in Congress, Lieutenant-Governor, Attorney General, Superintendent of Public Instruction, Railroad Commissioners, Secretary of State, State

Treasurer, State Auditor, justices of the supreme court, clerk of the supreme court, members of Congress, judges of the district court, senators and representatives, and all other officers to be voted for by the people of the state, or of any district comprising more than one county; and the Governor shall grant a certificate of nomination to the person having the highest number of votes for each office, and shall issue a proclamation declaring the nomination of each person by his party. In case there shall be no choice for nomination for any office by reason of any two or more persons having an equal and the highest number of votes of his party for nomination for either of said offices, the Secretary of State shall immediately give notice to the several persons so having the highest and equal number of votes to attend at his office, either in person or by attorney, at a time to be appointed by said secretary, who shall then and there proceed to publicly decide by lot which of said persons so having an equal number of votes shall be declared duly nominated by his party; and the Governor shall issue his proclamation declaring the nomination of such person or persons, as above provided.

Error in Ballot or Count.

Section 25. Whenever it shall appear by affidavit to the district court or judge thereof, or to the supreme court or judge thereof, that an error or omission has occurred or is about to occur in the printing of the name of any candidate or other matter on the official primary nominating election ballots, or that any error has been or is about to be committed in the printing of the ballots, or that the name of any person or any other matter has been or is about to be wrongfully placed upon such ballots or that any wrongful act has been performed by any judge or clerk of the primary election, county clerk, canvassing board or member thereof, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons aforesaid has occurred or is about to occur, such court or judge shall by order require the officer or persons charged with the error, wrongful act, or neglect, to forthwith correct the error, desist from the wrongful act, or perform the duty and do as the court shall order, or show cause forthwith why such error should not be corrected, wrongful act desisted from, or such duty or order performed. Failure to obey the order of any such court or judge shall be contempt. Any person in interest or aggrieved by the refusal or failure of any person to perform any duty or act required by this law shall, without derogation to any other right or remedy, be entitled to pray for a mandamus in the district court of appropriate jurisdiction, and any proceedings under the provisions of this law shall be immediately heard and decided.

Secretary of State may Send for Returns.

Section 26. If the returns and abstracts of the primary nominating election of any county in the state shall not be received at the office of the Secretary of State within twelve days after said election, the Secretary of State shall forthwith send a messenger to the county board of such county, whose duty it shall be to furnish said messenger with a copy of said returns, and the said messenger shall be paid out of the county treasury of such county the sum of twenty cents for each mile he shall necessarily travel in going to and returning from said county. The county clerk, whenever it shall be necessary for him to do so in order to send said returns and abstracts within the time above limited, may send the same by

telegraph, the message to be repeated, and the county shall pay the expense of such telegram.

Penalty for Official Misconduct.

Section 27. If any judge or clerk of a primary nominating election, or other officers or persons on whom any duty is enjoined by this law, shall be guilty of any willful neglect of such duty, or of any corrupt conduct in the discharge of the same, such judge, clerk, officer or other person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred dollars nor more than five hundred dollars.

Notice of Contest.

Section 28. Any person wishing to contest the nomination of any other person to any state, county, district, township, precinct, or municipal office may give notice in writing to the person whose nomination he intends to contest that his nomination will be contested stating the cause of such contest briefly, within five days from the time said person shall claim to have been nominated.

Service of Notice—Contest—How Heard.

Section 29. Said notice shall be served in the same manner as a summons issued out of the district court three days before any hearing upon such contest as herein provided shall take place, and shall state the time and place that such hearing shall be had. Upon the return of said notice served to the clerk of the court he shall thereupon enter the same upon his issue docket as an appeal case, and the same shall be heard forthwith by the district court; provided, that if the case cannot be determined by the district court in term time, within fifteen days after the termination of such primary nominating election, the judge of the district court may hear and determine the same at chambers forthwith, and shall make all necessary orders for the trial of the case and carrying his judgment into effect; provided, that the district court provisions of this section shall not apply to township or precinct officers. In case of contest between any persons claiming to be nominated to any township or precinct office, said notice shall be served in the manner aforesaid, and shall be returned to the district court of the county.

Contest for Precinct Officers—Trial, etc.

Section 30. The provisions of section 7234 and 7249, Revised Codes of Montana, 1907, so far as the same do not conflict with the provisions of this law, shall apply to and are hereby made applicable to primary nominating elections held under the provisions of this law.

Contest—How Tried and Decided.

Section 31. Each party to such contest shall be entitled to subpoenas, and subpoenas duces tecum, as in ordinary cases of law; and the court shall hear and determine the same without the intervention of a jury, in such manner as shall carry into effect the expressed will of a majority of the legal voters of the political party, as indicated by their votes for such nominations, not regarding technicalities or errors in spelling the name of

any candidate for such nomination; and the county clerk shall issue a certificate to the person declared to be duly nominated by said court, which shall be conclusive evidence of the right of said person to hold said nomination; provided, that the judgment or decision of the district court in term time, or a decision of the judge thereof in vacation, as the case may be, may be removed to the supreme court in such manner as may be provided for removing such cases from the district court to the supreme court.

Committeemen to be Elected by Each Party.

Section 32. There shall be elected by each political party, subject to the provisions of this law, at said primary nominating election, a committeeman for each election precinct, who shall be a resident of such precinct. Any elector, being a member of their party, may be placed in nomination for committeeman of any precinct by a writing so stating, signed by any five members of any political party being qualified electors of such precinct, and filed in the office of the county clerk within the time required in this act for the filing of petitions naming individuals as candidates for nomination at the regular biennial primary election; but no such nomination paper shall be filed unless verified by the affidavit of the signers to the effect that they are bona fide members of the political party named in the same. The names of the various candidates for precinct committeeman of each political party shall be printed on the ticket of the same in the same manner as other candidates and the voter shall express his choice among them in like manner as for such other candidates. The committeeman thus elected shall be the representative of his political party in and for such precinct in all ward or subdivision committees that may be formed. The committeemen elected in each precinct in each county shall constitute the county central committee of each of said respective political parties. Those committeemen who reside within the limits of any incorporated city or town shall constitute ex officio the city central committee of each of said respective political parties, and shall have the same power and jurisdiction as to the business of their several parties in such city matters that the county committee has in county matters, save only the power to fill vacancies in said committee, which power is vested in the county central committee. Each committeeman shall hold such position for the term of two years from the date of the first meeting of said committee immediately following their election. In case of a vacancy happening on account of death, resignation, removal from the precinct, or otherwise, the remaining members of said county committee may select a committeeman to fill the vacancy and he shall be a resident of the precinct in which the vacancy occurred. Said county and city central committees shall have the power to make rules and regulations for the government of their respective political parties in each county and city, not inconsistent with any of the provisions of this law, and to elect the county member of the state central committee and of the members of the congressional committee, and said committees shall have the same power to fill all vacancies and make rules in their jurisdiction that the county committee has to fill county vacancies and make rules. Said county and city central committees shall have the power to make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary nominating election, where such vacancy is caused by death or removal from the electoral district, but not otherwise. Said committees shall meet and organize by electing a chair-

man and secretary within five days after the candidates of their respective political parties shall have been nominated. They may select managing or executive committees and authorize such subcommittees to exercise any and all powers conferred upon the county, city, state and congressional central committees respectively by this law.

Penalty for Violation of Law.

Section 33. If any candidate for nomination shall be guilty of any wrongful or unlawful act or acts at a primary nominating election which would be sufficient, if such wrongful or unlawful act or acts had been done by such candidate at the regular general election, to cause his removal from office, he shall, upon conviction thereof, be removed from office in like manner as though such wrongful or unlawful act or acts had been committed at a regular general election, notwithstanding that he may have been regularly elected and shall not have been guilty of any wrongful or unlawful act at the election at which he shall have been elected to his office.

State Platform of Party.

Section 34. The candidates for the various state offices, and for the United States Senate, representatives in Congress and the legislative assembly nominated by each political party at such primary, and senators of such political party, whose term of office extends beyond the first Monday in January of the year next ensuing, and the members of the state central committee of such political party, shall meet at the call of the chairman of the state central committee not later than September 15th next preceding any general election. They shall forthwith formulate the state platform of their party. They shall thereupon proceed to elect a chairman of the state central committee and perform such other business as may properly be brought before such meeting.

Penalty for Bribery, etc.

Section 35. Any person who shall offer, or with knowledge of the same permit any person to offer for his benefit, any bribe to a voter to induce him to sign any nomination paper, and any person who shall accept any such bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe be offered or accepted before or after such signing, shall be guilty of a misdemeanor, and upon trial and conviction thereof be punished by a fine of not less than twenty-five nor more than one thousand dollars, and by imprisonment in the county jail of not less than ten days nor more than six months.

Other Offenses.

Section 36. Any act declared an offense by the general laws of this state concerning caucuses, primaries and elections shall also, in like case, be an offense in and as to all primaries as herein defined, and shall be punished in the same form and manner as therein provided, and all the penalties and provisions of the law as to such caucuses, primaries and elections, except as herein otherwise provided, shall apply in such case with equal force, and to the same extent as though fully set forth in this act.

Forgery—Refusal to Deliver Papers.

Section 37. Any person who shall forge any name of a signer or a witness to a nomination paper shall be guilty of forgery, and on conviction punished accordingly. Any person who, being in possession of nomination papers entitled to be filed under this act, or any act of the legislature, shall wrongfully either suppress, neglect or fail to cause the same to be filed at the proper time in the proper office, shall, on conviction, be punished by imprisonment in the county jail not to exceed six months, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment in the discretion of the court.

Applicability of Other Laws.

Section 38. The provisions of the laws of this state now in force in relation to the holding of election, the solicitation of voters at the polls, and the challenging of voters, the manner of conducting elections, of counting the ballots and making return thereof, the appointment and compensation of officers of election, and all other kindred subjects, shall apply to all primaries, in so far as they are consistent with this act, the intent of this act being to place the primary under the regulation and protection of the laws now in force as to elections.

Repealing Clause.

Section 39. All acts or parts of acts inconsistent with or in conflict with the provisions of this act are hereby repealed.

The foregoing act was approved by the people in November, 1912. See Laws 1913, pp. 569-589.

Editorial notes.

Constitutionality of primary election laws. 22 L. R. A. (N. S.) 1136; 41 L. R. A. (N. S.) 132.

VOTING BY ABSENT ELECTORS.

Chapter 110, Laws 1915, page 241.

"An act to provide a method of voting at general and primary elections by electors absent, or expecting to be absent, on the day of any such election from the county in which they are electors, and making regulations regarding such voting."

Voting by Elector When Absent from Place of Residence.

Section 1. Any qualified elector of this state, having complied with the laws in regard to registration, who is absent from the county of which he is an elector on the day of holding any general election or primary election for nomination of candidates for such general election, may vote at any such election, as hereinafter provided.

Application by Absentee to County Clerk for Ballot.

Section 2. At any time within thirty days next preceding such election any voter expecting to be absent on the day of election from the county in which his voting precinct is situated, may make application to the county clerk of such county for an official ballot or official ballots to be voted at such election, as an absent voter's ballot or ballots.

Form of Application.

Section 3. Application for such ballots shall be made on a blank to be furnished by the county clerk of the county of which the applicant is an elector, and shall be substantially the following form:

I,, a duly qualified elector of the precinct, in the county of, and state of Montana, and to the best of my knowledge and belief entitled to vote in such precinct at the next election, expecting to be absent from the said county on the day for holding such election, hereby make application for an official ballot to be voted by me at such election.

(Signed)

Postoffice address to which ballot is to be mailed

Affidavit of Absentee—Fees.

Section 4. There shall also be printed on said application an affidavit substantially in the following form:

State of Montana, }
County of....., } ss.

.... and being severally duly sworn, each for himself on his oath says that he is a resident and registered elector of the precinct mentioned in the foregoing application and that he knows the person whose signature is appended to the said application; that the said person is the identical person named in said application and resides in the said precinct.

.....

.....

Subscribed and sworn to before me this day of, 19.., A. D.

• • • • •

This affidavit must be subscribed by the witnesses and sworn to before some officer authorized to administer oaths, and the application shall not be deemed complete without this affidavit.

The voter making such application shall pay or transmit therewith to the county clerk the sum of thirty cents which shall be treated as official receipts of the office.

Duty of Clerk to Deliver Application or Ballot.

Section 5. Such application blank shall, upon request therefor, be sent by such county clerk to any elector of the county by mail, and shall be delivered to any elector upon application made personally at the office of such county clerk; provided, however, that no elector shall be entitled to receive such a ballot on election day, nor unless his application is made to or received by the county clerk before the delivery of the official ballots to the judge of election.

Mailing Ballot to Elector—Form of Return and Affidavit.

Section 6. Upon receipt of such application, properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been printed, the said county clerk shall send to such elector by mail, postage prepaid, one official ballot, or if there be more than one ballot to be voted by an elector of such precinct, one of each kind, and shall inclose with such ballot or ballots an envelope, to be furnished by such county clerk, which envelope shall bear upon the front thereof the name, official title and postoffice address of such county clerk, and upon the other side a printed affidavit in substantially the following form:

State of Montana, }
County of } ss.

I,, do solemnly swear that I am a resident of the precinct, (and if he be a resident of a city or town, add: "residing at, in the town or city of,") county of, and state of Montana, and entitled to vote in such precinct at the next election; that I shall expect to be absent from the said county of my residence on the day of holding such election and that I will have no opportunity to vote in person on that day.

Subscribed and sworn to before me this day of, 19..; and I hereby certify that the affiant exhibited to me the inclosed ballot or ballots for inspection before marking, and that the same was (or were) then unmarked, and that he then in my presence, and in the presence of no other person, and in such manner that I could not see his vote, marked said ballot (or ballots) and inclosed and sealed the same in this envelope. That the affiant was not solicited or advised by me to vote for or against any candidate or measure.

.....
.....

Manner of Marking and Swearing to the Ballot by Elector.

Section 7. Such voter shall make and subscribe the said affidavit before an officer authorized by law to administer oaths and who has an official seal, and may do so at any place in the state of Montana, and such voter shall thereupon, in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot see the vote, and such ballot or ballots shall thereupon, in the presence of such officer, be folded by such voter so that each ballot will be separate, and so as to conceal the vote, and shall be, in the presence of such officer, placed in such envelope without detaching any stub or stubs, and the said envelope securely sealed. Said officer shall thereupon append his signature and official title and affix his seal at the end of said jurat and certificate. Said envelope shall be mailed by such absent voter, postage prepaid, or delivered to the county clerk.

Duty of County Clerk upon Receipt of Marked Ballot.

Section 8. Upon receipt of such envelope, such county clerk shall forthwith inclose the same, unopened, together with the written application of such absent voter, in a larger envelope, which shall be securely sealed and indorsed with the name of the proper voting precinct, the name and official title of such clerk, and the words, "This envelope contains an absent voter ballot and must be opened only on election day at the polls while the same are open," and such clerk shall safely keep the same in his office until the same is delivered or mailed by him as provided in the next section.

Delivery or Mailing of Ballots to Election Judges.

Section 9. In case such envelope is received by such clerk prior to the delivery of the official ballots to a judge of election of the precinct in which such absent voter resides, said larger envelope, containing the said voter's envelope, and his said application, as above provided, shall be delivered to the judge of election of such precinct, to whom the official ballots of the precinct shall be delivered, and at the same time. In case the official ballots for such precinct shall have been delivered to the judge of

election prior to the time of the receipt by the county clerk of such absent voter's envelope, such clerk shall, immediately after inclosing such voter's envelope and his application in a larger envelope, and after indorsing the latter as provided in the foregoing section, address and mail such larger envelope, postage prepaid, to the said judge of election of said precinct, as hereinafter further provided.

Clerk to Keep Record Ballots and Issue Certificate.

Section 10. The ballot or ballots to be delivered or marked by such absent voter shall be one of the regular official ballots to be used at such election and of each kind of such official ballots, if there be more than one kind to be voted, beginning with ballot number 1 and following consecutively, according to the number of applications for such absent voter's ballots. The county clerk shall keep a record of all ballots so delivered for the purpose of absent voting, as well as of ballots, if any, marked before him as hereinafter provided, and shall make and deliver to the judge of election, to whom the ballots for the precinct are delivered, and at the time of the delivery of such ballots, a certificate stating the numbers of the ballots delivered or mailed to absent voters, as well as those marked before him, if any, and the names of the voters to whom such ballots shall be delivered or mailed, or by whom they shall have been marked if marked before him.

Duty of Election Judges—Poll Lists—Numbering Ballot—Rejected Ballots.

Section 11. The judges of election, at the opening of the polls, shall note on the poll list, when one is required by law to be kept, opposite the numbers corresponding to the numbers of the ballots issued to absent voters, as shown by the certificate of the county clerk, the fact that such ballots were issued to absent voters and shall reserve said numbers for the absent voters. The notation may be made by writing the words "Absent Voters" opposite such numbers. The judges shall not allow any names to be inserted in the poll list on the lines corresponding to said numbers, except the name of the elector entitled to each particular number according to the certificate of the county clerk and the number of his ballot. Any so rejected shall be placed together with the voter's application and the absent voter's envelope provided for the purpose by the clerk and recorder which shall be sealed and indorsed with the words "rejected absent voter ballots" numbered and shall put thereon the number of the ballots given to absent voters according to the county clerk's certificate. There shall be a separate inclosing envelope for the ballot or ballots of each absent voter whose ballot or ballots may have been rejected and such envelopes shall be placed in an envelope together with the other ballots and shall not be opened without order of a court of competent jurisdiction.

Voting Before Election Day by Elector Expecting to be Absent.

Section 12. Any qualified elector who is present in his county after the official ballots of such county have been printed, and who has reason to believe that he will be absent from such county on election day, as provided in section 2, may vote before he leaves his county, in like manner as an absent voter, before the county clerk or some officer authorized to administer oaths and having an official seal; and the provisions of this act shall be deemed to apply to such voting. If the ballot be marked before the county clerk, it shall be his duty to deal with it in the same manner as if it had come by mail.

Opening of Envelopes Containing Ballots—Deposit in Box—Rejection of Ballot.

Section 13. At any time between the opening and closing of the polls on such election day, the judges of election of such precinct shall first open the outer envelope only, and compare the signature of such voter to such application with the signature to such affidavit.

In case the judges find the affidavit is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct and has not voted at such election, they shall open the absent voter envelope, in such manner as not to destroy the affidavit thereon, and take out the ballot or ballots therein contained, and without unfolding the same, or permitting the same to be opened or examined, shall ascertain whether the stub or stubs is or are still attached to the ballot or ballots and whether the number thereon corresponds to the number in the county clerk's certificate. If so, they shall indorse the same in like manner that other ballots are indorsed, shall detach the stub, as in other cases, and deposit the ballot or ballots in the proper ballot box or boxes, and make in their election list and books the proper entries to show such elector to have voted. In case such affidavit is found to be insufficient, or that the said signatures do not correspond, or that such applicant is not then a duly qualified elector of such precinct, such vote shall not be allowed, but without opening the absent voter envelope, the judges of such election shall mark across the face thereof, "rejected as defective," or "rejected as not an elector," as the case may be. The absent voter envelope, when such absent vote is voted, and the absent voter envelope with its contents, unopened, when such absent vote is rejected, shall be deposited in the ballot-box containing the general or party ballots, as the case may be, retained and preserved in the manner by law provided for the retention and preservation of official ballots voted at such election. If upon opening the absent voter's envelope, it be found that the stub of any ballot has been detached or that the number thereon does not correspond to the number in the county clerk's certificate of the number issued to such absent voter, the ballot shall be rejected and it shall then and there, and without looking at the face thereof be marked on the back "rejected on the ground of . . ." filling the blank with the statement of the reason of the rejection; which statement shall be dated and signed by the majority of the judges. The ballot or ballots so rejected together with the absent voter's envelope bearing the application and the said application shall all be inclosed in an envelope which shall be then and there securely sealed and on such envelope the judges shall write or cause to be written (if not already printed thereon) the words "rejected ballot of absent voter" (writing in the name of the elector). The rejected ballot or ballots is or are" The judges shall designate the rejected ballot as "General Ballot" if it be a ballot for candidates that be rejected. If the rejected ballot be a one put on a question or proposition submitted to the vote of the electors, the judges shall designate such ballot as ballot question No . . . in the certificate on the envelope. There shall be a separate inclosing envelope for the ballot or ballots of each absent voter whose ballot or ballots may have been rejected and such inclosing envelope shall be placed in the envelope in which the other ballots voted or required to be placed and shall not be opened without an order of a court of competent jurisdiction. The county clerk shall provide and have delivered to the judge of election, suitable envelopes for inclosing rejected absent voter's ballots.

Transmission of Ballot by Special Delivery.

Section 14. Whenever the county clerk shall mail the envelope containing an absent voter's envelope and ballots, as provided in this act, to a judge of election, he shall place thereon the proper postage and the proper stamp or stamps and the proper markings to secure the transmission and delivery thereof, as a special delivery letter, in accordance with the postal laws of the United States and the regulations of the United States postoffice.

Voting in Person by One Who has Marked Absent Ballot.

Section 15. Any qualified elector who has marked his ballot as hereinbefore provided, who shall be in his precinct on election day, shall be permitted to vote in person, provided his said ballot has not already been deposited in the ballot-box.

Procedure Where Elector is Present After Marking Absent Ballot.

Section 16. In case any elector who shall have marked his ballot as an absent voter, as in this act provided, shall appear at the voting place of his precinct on election day, before his ballot or ballots shall have been deposited in the ballot-box, his envelope containing his ballot shall, if he so desires, be opened in his presence, and the ballot or ballots found therein shall be deposited in the ballot-box, as hereinbefore provided. If such elector shall ask for a new ballot or ballots with which to vote, he shall be entitled to the same, but in such case his absent-voter-envelope shall not be opened, and the judges shall mark, or cause to be marked, across the face thereof, "unopened because voter appeared and voted in person," and then deposit in the said envelope, unopened, in the ballot-box. If the envelope containing the absent-voter-ballot shall have been marked "rejected as defective," and deposited in the ballot-box, such elector so appearing shall have the same right to vote as if he had not attempted to vote as an absent voter. If voting machines are there used, he shall vote by machine as other voters.

Opening of Envelope After Deposit.

Section 17. If the aforesaid envelope, containing an absent-voter-ballot shall have been deposited, unopened, in the ballot-box, the said envelope shall not be opened, without an order of a court of competent jurisdiction.

False Affidavit is Perjury—Official Neglect a Misdemeanor.

Section 18. If any person shall willfully swear falsely to any affidavit in this act provided for, he shall, upon conviction thereof, be deemed guilty of perjury and shall be punished as in such cases by law provided. If the county clerk or any election officer shall refuse or neglect to perform any of the duties prescribed by this act, or shall violate any of the provisions thereof, or if any officer taking the affidavit provided for in section 5 shall make any false statement in his certificate thereto attached, he shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Voting Machines—Canvass of Votes.

Section 19. In and for precincts where voting machines are to be used, the county clerk shall cause to be printed and shall provide ballots in the regular form of printed ballots and sufficient in number for possible absent

voters, and also poll-books and ballot-boxes such as lists required for the precincts in which printed ballots are used. Absent voters' ballots received in such precincts shall be cast as in this act provided and all provisions of this act and of the election laws shall apply to the casting, canvassing, counting and returning of such ballots and votes except as herein otherwise provided. In making the canvass the votes cast by absent voters shall be added by the judges of election to the votes cast on the voting machines and the results determined and reported accordingly.

Duty of Elector if Present on Election Day.

Section 20. In case any elector who shall have taken advantage of the provisions of this act, and marked his ballot as an absent voter, as in this act provided, shall not leave his county, or shall return thereto on or before election day, and in time to allow him to go to the polls, to wit, to the voting place in his precinct and to be admitted therein before the close of the polls, it shall be his duty so to go to the said voting place and to present himself to the judges of election at said voting place, and if he shall willfully neglect so to do he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment not more than thirty days in the county jail, or by both such fine and imprisonment. If such an elector so appears, the judges of election shall note in the poll-books and lists the fact of his appearance, as well as whether or not he voted in person.

Section 21. This act shall take effect and be in full force from and after its passage and approval by the Governor. [Approved March 8, 1915; Laws 1915, c. 110, p. 241.]

CHOICE OF UNITED STATES SENATORS.

Chapter 60, Laws 1911, page 120.

"An act to provide for the nomination of candidates for the office of senator in the Congress of the United States by political party conventions, or by certificate and petition, and providing that such candidates shall be voted for by the electors of the state, in the same manner as candidates for state officers, and directing that certificates of the result of such vote shall be transmitted by the Governor to the legislative assembly, whose duty it is to elect a senator in the Congress of the United States, for its information and guidance, providing for the filing of pledges with the county clerk and recorder of the respective counties by candidates for member of the House of Representatives or the Senate of the legislative assembly, in reference to whom such candidate will support for United States senator if elected, and to amend section 545 of the Revised Codes of 1907 of the state of Montana so as to provide for placing on the official ballot the names of candidates for United States senator."

Be it enacted by the Legislative Assembly of the State of Montana:

Nomination of United States Senator by Political Convention.

Section 1. It shall be the duty of the state convention of any political party within the state of Montana, held next preceding any session of the legislative assembly, at which is to be elected a United States senator, to nominate in the same manner as candidates for state officers are nominated,

a candidate of such political party for the office of senator in the Congress of the United States and to certify such nomination to the Secretary of State in the same manner as is now provided for certifying nominations of candidates for state officers, and it shall be the duty of the Secretary of State to treat such nominations for senator in the Congress of the United States in the same manner as candidates and nominations for state officers, "And to certify to the county clerk of each county the nominations for United States senator, so made as shown by and specified in such certificates of nomination at the same time and in the same manner as is now provided by law for the certification by him to the various county clerks of nominations made of candidates for state offices."

Election Proclamation of Governor.

Section 2. The election proclamation of the Governor provided for in section 452 and 453, Revised Codes, state of Montana, 1907, shall contain, in case of a general election immediately preceding the session of the legislative assembly at which is to be elected a United States senator, a statement to the effect that at such election the electors may express their choice for the office of United States senator.

Manner of Voting for Senators.

Section 3. At the general election held next preceding any session of the legislative assembly, at which is to be elected a United States senator, the electors of the state shall have the right to express their choice for such United States senator, in the same manner as for the candidates for the various offices to be filled at such election, and shall have the right to vote in the same manner as they vote for other candidates for office, for one or the other of such persons so nominated for the office of senator in the Congress of the United States and certified and appearing upon the official ballot, as aforesaid.

Ballots to Contain Names of Candidates for the United States Senate.

Section 4. All ballots prepared for use at any such election as provided by section 545 of the Revised Codes of Montana of 1907, shall contain in each list of candidates of the several parties, the candidates of each political party for the office of United States senator, or the candidates of such party, in case two are to be elected at the same time, the candidate or candidates, as the case may be of each political party for the office of United States senator being placed first in the list after words, "For United States Senator."

In case two senators are to be elected, the length of the term to fill which each candidate is nominated shall be designated by appropriate reference on the ballot immediately before his name.

Canvassing and Certifying Vote.

Section 5. The vote for United States senator must be canvassed, certified to and transmitted in the same manner as the vote for state officers.

Nomination of Senators by Petition.

Section 6. Candidates for the office of senator in Congress of the United States may be nominated otherwise than by political party conventions or primary meetings, in the same manner as other candidates for office may now be nominated otherwise than by convention or primary meeting, as provided for in section 524 of the Revised Codes, state of Montana, 1907,

provided, that in the case of the first election held under the provisions of this act, the vote for Governor shall be used as a basis of computation and when so nominated their names shall be placed upon the official ballot to be used at such general election, in the same manner as is now provided by law for state officers, not nominated by convention or primary meeting, and may be voted upon by the electors of the state as herein provided in relation to candidates for senator in the Congress of the United States nominated by political conventions or primary meetings.

Governor to Certify Number of Votes Received by Each Candidate.

Section 7. The Governor shall, upon the convening of any session of the legislative assembly, at which a United States senator is to be elected, transmit to each house, a certificate showing the number of votes received by each candidate for United States senator, so nominated as aforesaid, as returned to him by the state board of canvassers, for their information and guidance.

Candidates for State Legislature may File Statement With County Recorder.

Section 8. Any candidate for the office of senator or representative in the legislative assembly, who has been nominated by a party convention for such office, or who has been nominated by a party convention for such office, or who has been nominated for such office as provided for in section 524 of the Revised Codes, state of Montana, 1907, may, not more than thirty days nor less than twenty days, before the day upon which the general election is to be held, file with the county clerk and recorder of the county wherein such person is a candidate, one or the other of the following statements:

Statement No. 1.

I state to the people of Montana, as well as to the people of my county, that during my term of office, I will always vote for that candidate for United States senator in Congress who has received the highest number of the people's votes for that position, at the general election next preceding the election of a senator in Congress without regard to my individual preference.

.....,
(Signature of Candidate.)

Statement No. 2.

During my term of office I shall consider the vote of the people for the United States senator in Congress as nothing more than a recommendation which I shall be at liberty to wholly disregard, if the reason for doing so seems to me to be sufficient.

.....,
(Signature of the Candidate.)

Certificate by County Clerk.

Section 9. Each county clerk and recorder within the state of Montana shall prepare a certificate under his hand and the seal of his office, showing what candidates for the office of senator or representative in the Legislative assembly have duly signed and filed statement No. 1, and also showing what candidates for such offices have duly signed and filed statement No. 2, and also showing what candidates for office have failed to file either of said statements, and shall cause such certificate to be published in some newspaper, either weekly or daily, within his said county, and if

there be a daily newspaper published in said county said certificate shall be published in said daily newspaper for fourteen successive days next preceding the day upon which such general election is to be held, and if there be no daily newspaper published in said county, then said certificate shall be published in some weekly newspaper published in said county once each week during the two weeks next preceding the day of such general election.

Repealing Clause.

Section 10. All acts and parts of acts in conflict with this act are hereby repealed.

Section 11. This act shall be in full force and effect from and after its passage and approval.

Approved March 1, 1911.

PRESIDENTIAL ELECTIONS.

A bill to propose by initiative petition a law to provide for the expression by the people of the state of Montana of their preference for party candidates for President and Vice-President of the United States, the election of delegates to presidential conventions and the nomination of presidential electors by direct vote.*

Be it enacted by the People of the State of Montana:

Applicability of Election Laws.

Section 1. In the years when a President and Vice-President of the United States are to be elected, the primary nominating election shall be held on the forty-fifth day before the first Monday in June of said year; and all laws pertaining to the nomination of candidates, registration of voters and all other things incident and pertaining to the holding of the regular biennial nominating election, shall be enforced and affected.

Electors may Express Preference for President.

Section 2. When candidates for the offices of President and Vice-President of the United States are to be nominated, every qualified elector of a political party subject to this law shall have opportunity to vote his preference, on his party nominating ballot, for his choice for one person to be the candidate of his political party for President, and one person to be the candidate of his political party for Vice-President of the United States, either by writing the names of such persons in blank spaces to be left on said ballot for that purpose or by marking with a cross before the printed names of the persons of his choice, as in the case of other nominations. The names of any persons shall be so printed on said ballots solely on the petition of their personal supporters in Montana without said persons themselves signing any petition or acceptance. The names of persons in such political party who shall be presented by petition of their supporters for nomination to be party candidates for the office of President or Vice-President of the United States, shall be printed on the nominating official ballot, and the ballots shall be marked, and the votes shall be counted, canvassed and returned in like manner and under the same conditions as to names, petitions and other matters, as far as the same are applicable, as the names and petitions of aspirants for the party nominations

*Adopted by the people at the November election in 1912. See Laws 1913, pp. 590-593.

for the office of Governor and for United States senator in Congress are, or may be by law required to be marked, filed, counted, canvassed and returned.

Delegates to National Convention.

Section 3. The members of the political parties subject to this law shall elect their party delegates to their national conventions for the nomination of their party candidates for President and Vice-President of the United States, and shall nominate candidates for their party presidential electors at such nominating election. The Governor shall grant a certificate of election to each of the delegates so elected, which certificates shall show the number of votes received in the state by each person of such delegate's political party for nomination as its candidate for President and Vice-President. Nominating petitions for the office of delegate to the respective party national conventions, to be chosen and elected at said nominating election, shall be sufficient if they contain a number of signatures of the members of the party equal to one per cent of the party vote in the state at the last preceding election for representative in Congress; provided that not more than five hundred signatures shall be required on any such petition. Every qualified voter shall have the right at such nominating election to vote for the election of one person, and no more, to the office of national delegate for his party, and to vote for the nomination of one aspirant, and no more, for the office of presidential elector as the candidate of his party. A number of such candidates equal to the number of delegates to be elected by each party which is subject to the provisions of this law, receiving, respectively, each for himself, the highest number of votes for such office, shall be thereby elected. Every political party subject to the provisions of this law shall be entitled to nominate, at said nominating election, as many candidates for the office of presidential elector as there are such offices to be elected; that number of aspirants in every such party who shall receive, respectively, each for himself, the highest number of votes of his party for that nomination, shall be thereby nominated as a candidate of his political party for the office of presidential elector.

Expenses of Delegates—Oath of Delegate.

Section 4. Every delegate to a national convention of a political party recognized as such organization by the laws of Montana, shall receive from the state treasury the amount of his traveling expenses necessarily spent in actual attendance upon said convention, as his account may be audited and allowed by the Secretary of State, but in no case to exceed two hundred dollars for each delegate; provided, that such expenses shall never be paid to any greater number of delegates of any political party than would be allowed such party under the plan by which the number of delegates to the Republican National Convention was fixed by the Republican party of Montana in the year 1912. The election of such national delegates for political parties not subject to the direct primary nominating elections law shall be certified in like manner as nominations of candidates of such political parties for elective public offices. Every such delegate to a national convention to nominate candidates for President and Vice-President, shall subscribe to an oath of office that he will uphold the Constitution and the laws of the United States and of the state of Montana, and that he will, as such officer and delegate, to the best of his judgment and ability, faithfully carry out the wishes of his political party as expressed by its voters at the time of his election.

Petition to Place Name on Nominating Ballot.

Section 5. The committee or organization which shall file a petition to place the name of any person on the nominating ballot of their political party to be voted for by its members for expression of their choice for nomination as the candidate of such party for President or Vice-President of the United States, shall have the right, upon payment thereof, to four pages of printed space in the campaign books of such political party provided for by law. In this space said committee shall set forth their statement of the reasons why such person should be voted for and chosen by the members of their party in Montana and in the nation as its candidate. Any qualified elector of any such political party who favors or opposes the nomination of any person by his own political party as its candidate for President or Vice-President of the United States, may have not exceeding four pages of space in his aforesaid party nominating campaign book, at a cost of one hundred dollars per printed page, to set forth his reasons therefor.

Space for Candidate in Campaign Book.

Section 6. Every person regularly nominated by a political party, recognized as such by the laws of Montana for President or Vice-President of the United States, or for any office to be voted for by the electors of the state at large, or for senator or representative in Congress, shall be entitled to use four pages of printed space in the state campaign book provided for by law. In this space, the candidate, or his supporters with his written permission filed with the Secretary of State, may set forth the reasons why he should be elected. No charge shall be made against candidates for President and Vice-President of the United States for this printed space. The other candidates above named shall pay at the rate of one hundred dollars per printed page for said space, and said payment shall not be counted as a part of the ten per cent of one year's salary that each candidate is allowed to spend for campaign purposes.

Passed by the people at November election in 1912. See Laws 1913, pp. 590-593.

CORRUPT PRACTICES ACT.

A bill to propose by initiative petition a law to limit candidates' election expenses; to define, prevent and punish corrupt and illegal practices in nominations and elections; to secure and protect the purity of the ballot; to provide for furnishing information to the electors and to provide the manner conducting contests for nominations and elections in certain cases.*

Be it enacted by the People of the State of Montana:

Expenditure by or for Candidate for Office.

Section 1. No sums of money shall be paid, and no expenses authorized or incurred by or on behalf of any candidate to be paid by him, except such as he may pay to the state for printing, as herein provided, in his campaign for nomination to any public office or position in this state, in excess of fifteen per cent of one year's compensation or salary of the office for which he is a candidate, provided, that no candidate shall be re-

*Adopted by the people at the November election in 1912. See Laws 1913, pp. 593-610.

stricted to less than one hundred dollars in his campaign for such nomination. No sums of money shall be paid, and no expenses authorized or incurred, contrary to the provisions of this act, for or on behalf of any candidate for nomination. For the purposes of this law the contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employee, or fellow-official or fellow-employee of a corporation shall be deemed to be that of the candidate himself.

Filing Information as to Candidate With Secretary of State for Publication.

Section 2. Any candidate, and unless he notifies the Secretary of State that he refuses them permission, the friends of any candidate for nomination to any state or district office, when the district is composed of one or more counties, may file with the Secretary of State, for publication as herein provided, not later than the thirty-third day before the biennial primary nominating election, with his portrait cut if he wishes, a printed or typewritten statement or statements, on the conditions hereinafter set forth, over his or their signatures, stating the reasons why he should be nominated; provided, that no candidate, nor his friends, shall be allowed to file any such statements, unless his petition for nomination is duly filed with the Secretary of State, not later than the forty-first day before said nominating election. Any person or persons opposing the nomination of any such candidate may, not later than thirty-ninth day, before said nominating election, file with the Secretary of State their printed or typewritten statements over their signatures, of the reasons why such candidate should not be nominated, but every such statement shall be accompanied by proof, by affidavit or sheriff's return, that they have caused to be served personally and in person, upon such candidate a true copy of such statement. Each candidate shall be allowed one page of printed matter and those opposing him shall each be allowed one page of space on equal terms with him as hereinafter provided. Nothing in this law shall be deemed to make any such statement or the authors thereof, free or exempt from any civil or criminal action or penalty, because of any false, slanderous or libelous statements offered for printing or contained in said pamphlet. The person or persons procuring, making, composing or offering such statements for filing, shall be deemed the authors and publishers thereof.

Payment Per Page for Publication.

Section 3. Candidates for nomination shall pay for one page of space in the publication herein provided for as follows: For the office of United States senator in Congress, one hundred dollars; for representative in Congress one hundred dollars; for justice of the supreme court, seventy-five dollars; for Governor, one hundred dollars; for Secretary of State, one hundred dollars; for State Treasurer, one hundred dollars; for State Auditor, one hundred dollars; for State Superintendent of Public Instruction, seventy-five dollars; for railroad commissioner, one hundred dollars; for Attorney General, one hundred dollars; for clerk of the supreme court, seventy-five dollars; for Lieutenant-Governor fifty dollars; for senator or representative in the legislative assembly, ten dollars; for district judge, fifty dollars; for candidates for any other office for a district consisting for one or more counties or state office, fifty dollars. Any candidate may have additional space at the rate of one hundred dollars

per page, but no payment shall be received for less than a full page; provided, that not more than three additional pages shall be allowed to any one candidate. All payments required by this section shall be made to the Secretary of State when the statement is offered to him for filing, and be by him paid into the general fund in the state treasury.

Printing of Pamphlets by State Printer.

Section 4. Not later than the thirtieth day before the primary nominating election, the Secretary of State shall hand to the official printer all of such statements and portrait cuts, properly compiled, edited, prepared and indexed for printing; it shall be the official printer's duty to print and bind the same in pamphlet form, printing the pictures of candidates with and as a part of their several statements, where such portrait cuts are offered; statements of those who directly oppose any candidate shall follow next after his statement. All of the statements filed for and against all the candidates for nomination to each office shall be printed in the order in which candidates' names are grouped under the title to their offices on the official ballot at the nominating election. In preparing said pamphlets for printing, the Secretary of State shall compile the copy for the same in such form as to make it most convenient for the official printer to print and bind under one cover, separately for each political party, the statements only of candidates to be voted for by members of that party for nomination in the same electoral district or division; that is to say, the statements and arguments of all candidates seeking Republican votes in Ravalli county for nominations by the Republican party to state and district offices, for a district comprising one county or more, shall be printed and bound under one cover, and the same with the democratic and any other party required to nominate its candidates at said nominating election. The same method shall be applied in printing the pamphlets for all other counties and districts, but no picture, statement or argument for or against any candidate for nomination shall be included in the copy of said pamphlet going to any county where such candidate is not to be voted for. The official printer shall begin the delivery of said pamphlets to the Secretary of State as quickly as possible, and not later than the twentieth day before the nominating election, and complete the same not later than the fifteenth day before said nominating election, printing and delivery first so far as practicable, the pamphlets for the counties in the order of their distance from the state capital. At the time of delivery the copy to the official printer, the Secretary of State shall order the number of copies he estimates will be necessary for each county.

Mailing to Voters Pamphlets Concerning Candidates.

Section 5. The several county clerks shall obtain the postoffice address of each voter who registers and on the seventeenth day preceding the nominating election, said county clerks shall mail to the Secretary of State the name and postoffice address of every voter registered at that time in their respective counties; immediately on the close of registration for such nominating election, and again at the close of registration for the general election, they shall deliver to the Secretary of State the postoffice address of every voter who registers during the said interval. At least eight days before the regular biennial primary nominating election, the Secretary of State shall forward by mail to every voter a copy of

each pamphlet containing the names and statements herein provided for. The pages of the pamphlets required by this act shall be six by nine inches in size, and the printed matter therein shall be set in eight point Roman-faced type, single leaded, and twenty-five ems pica in width, with proper heads. In the foot margin of every page of the party pamphlets for nominating election shall be shown the authority for the information therein, as "The information furnished by (name of candidate or name of his friends or opponents)," as the case may be. In the foot margin of every page of the pamphlet herein provided for the general election shall be shown the authority for the statements thereof, as "The information furnished by (title of committee or managing agent of the political party or name of the independent candidate,)" as the case may be.

Managing Officers of Party may have Pamphlets Published and Circulated.

Section 6. Not later than the thirtieth day before the regular biennial general election the state executive committee or managing officers of any political party or organization having nominated candidates, but no others except independent candidates, may file with the Secretary of State portrait cuts of its candidates and typewritten statements and arguments for the success of its principles and the election of its candidates, and opposing or attacking the principles and candidates of all other parties. Not later than the twenty-eighth day before said general election the Secretary of State shall deliver to the official printer properly compiled and prepared for printing, the said portrait cuts, statements and arguments, with an order for the number of pamphlet copies of the same necessary to supply one, at least, complete as to the candidates to be voted for in any county for which the same may be designed, for every registered voter within the state of Montana. The official printer shall begin delivering said pamphlets to the Secretary of State as soon as possible, and shall complete the same within twelve days. The secretary of State shall begin mailing the pamphlets to the voters of the state as soon as they are delivered to him, and shall complete the mailing on or before the tenth day before said general election.

Binding Pamphlets in One Volume—Limit on Number of Pages.

Section 7. All the portrait cuts, statements and arguments of all the political parties and independent candidates shall be bound together in one pamphlet, and no party shall have more than twenty-four pages, nor an independent candidate more than two pages therein. The political parties and independents shall pay to the Secretary of State for the public treasury for said pamphlet at the time of filing their copy with him, at the rate of fifty dollars for each printed page of space in said pamphlet used by such party or independent candidate. The provisions of the preceding sections requiring estimates of the number of pamphlets for each county, limitations on the candidates' names, statements and pictures to be included in the pamphlets going to each county, and the manner of distribution, shall apply in like manner to the pamphlets herein provided for the general election.

Limitations on Moneys to be Paid Out on Behalf of Candidate.

Section 8. No sums of money shall be paid and no expenses authorized or incurred by or on behalf of any candidate who has received the nomination to any public office or position in this state, except such as

he may contribute toward payment for his political party's or independent statement in the pamphlet herein provided for, to be paid by him in his campaign for election, in excess of ten per cent, of one year's salary or compensation of the office for which he is nominated; provided, that no candidate shall be restricted to less than one hundred dollars. No sum of money shall be paid and no expenses authorized or incurred by or on behalf of any political party or organization to promote the success of the principles or candidates of such party or organization, contrary to the provisions of this act. For the purposes of this act the contribution, expenditure or liability of a descendent, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employee or fellow-official or fellow-employee of a corporation shall be deemed to be that of the candidate himself.

Statement in Favor of Nomination of Person—Printing and Mailing.

Section 9. In cities of more than ten thousand population, any candidate for nomination or election to any elective municipal office may file with the city clerk, auditor or recorder, not later than the fifteenth day before the municipal primary nominating election, a statement of the reasons why he should be nominated and elected, and portrait cut if he desires, on the conditions hereinafter set forth. Such candidate shall pay for the services herein provided at the rate of twenty dollars for each printed page of space; no payment shall be received for less than a full page. All payments made under this section shall be made to the city clerk, auditor or recorder at the time the statement is offered to him for filing, and shall be by him paid into the general fund in the city treasury. The city clerk, auditor or recorder shall properly compile, edit, prepare and index said statements and arguments for printing, and if there shall be any municipal measures to be voted upon at the ensuing municipal election he may bind in with said pamphlet a copy of each and of the arguments submitted thereon in like manner as the Secretary of State is required to do in state elections, and shall cause the same to be printed in the same manner that other city printing is done, and have them all bound under one cover; and he shall, at least eight days before the regular nominating election, forward a copy of said pamphlet with postage fully prepared, to each voter in the city whose postoffice address he may have or can obtain from the city directory, registration books or otherwise. The provisions of this section shall not apply to cities of less than ten thousand inhabitants, as shown by the census next preceding such municipal election. The provisions of the preceding sections for statements opposing candidates shall apply also to municipal elections, under this section, subject to the same rules of filings, payments, etc., required of candidates' statements by this section.

Definitions of Words Used in This Act.

Section 10. Terms used in this act shall be construed as follows, unless other meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the manifest intent of the law:

"Persons" shall apply to any individual, male or female, and, where consistent with collective capacity, to any committee, firm, partnership, club, organization, association, corporation, or other combination of individuals.

"Candidate" shall apply to any person whose name is printed on an official ballot for public office, or whose name is expected to be or has been presented for public office, with his consent, for nomination or election.

"Political agent" shall apply to any person who, upon request or under agreement, receives or disburses money in behalf of a candidate.

"Political committee" shall apply to every combination of two or more persons who shall aid or promote the success or defeat of a candidate, or a political party or principle, and the provisions of law relating thereto shall apply to any firm or partnership, to any corporation, and to any club, organization, association, or other combination of persons, whether incorporated or not, with similar purposes, whether primary or incidental.

"Public office" shall apply to any national, state, county or city office to which a salary attaches and which is filled by the voters, as well as to the office of presidential elector, United States senator, or presiding officer of either branch of the legislature.

"Give," "provide," "expend," "contribute," "receive," "ask," "solicit," and like terms, with their corresponding nouns, shall apply to money, its equivalent, or any other valuable thing; shall include the promise, advance deposit, borrowing, or loan thereof, and shall cover all or any part of a transaction, whether it be made directly or indirectly.

None of the provisions of this act shall be construed as relating to the rendering of services by speakers, writers, publishers, or others, for which no compensation is asked or given; nor to prohibit expenditure by committees of political parties or organizations for public speakers, music, halls, lights, literature, advertising, office rent, printing, postage, clerk hire, challengers or watchers at the polls, traveling expenses, telegraphing or telephoning, or making of poll lists.

Statement by Candidate as to Moneys Expended—Filing After Election.

Section 11. Every candidate for nomination or election to public office, including candidates for the office of senator of the United States shall within fifteen days after the election at which he was a candidate, file with the Secretary of State, if a candidate for senator of the United States, representative in Congress, or for any state or district office in a district composed of one or more counties, or for members of the legislative assembly from a district composed of more than one county, but with the county clerk for legislative districts composed of not more than one county, and for county and precinct offices, and with the city clerk, auditor or recorder, of the town or city in which he resides if he was a candidate for a town, city or ward office, an itemized sworn statement setting forth in detail all the moneys contributed, expended or promised by him to aid and promote his nomination or election, or both, as the case may be, and for the election of his party candidates, and all existing unfulfilled promises of every character and all liabilities remaining uncanceled and in force at the time such statement is made, whether such expenditures, promises and liabilities were made or incurred before, during or after such election. If no money or other valuable thing was given, paid, expended, contributed, or promised, and no unfulfilled liabilities were incurred by a candidate for public office to aid or promote his nomination or election, or the election of his party candidate, he shall file a statement to that effect within fifteen days after the election at which he was a candidate. Any candidate who shall fail to file such a statement shall be fined twenty-five dollars for every day on which he

was in default, unless he shall be excused by the court. Fifteen days after any such election the Secretary of State, or county clerk, city clerk, auditor or recorder, as the case may be, shall notify the county attorney of any failure to file such a statement on the part of any candidate, and within ten days thereafter such prosecuting officer shall proceed to prosecute said candidate for such offense.

Statements and Accounts of Political Committees.

Section 12. Every political committee shall have a treasurer, who is a voter, and shall cause him to keep detailed accounts of all its receipts, payments and liabilities. Similar accounts shall be kept by every person, who in the aggregate receives or expends money or incurs liabilities to the amount of more than fifty dollars for political purposes and by every political agent and candidate. Such accounts shall cover all transactions in any way affecting or connected with the political canvass, campaign, nomination or election concerned. Every person receiving or expending money or incurring liability by authority or in behalf of or to promote the success or defeat of such committee, agent, candidate or other person or political party or organization, shall, on demand, and in any event within fourteen days after such receipt, expenditure or incurrence of liability, give such treasurer, agent, candidate or other person on whose behalf such expense or liability was incurred detailed account thereof, with proper vouchers. Every payment, except payments less in the aggregate than five dollars to any person, shall be vouched for by a receipted bill stating the particulars of expense. Every voucher, receipt and account hereby required shall be a part of the accounts and files of such treasurer, agent, candidate or other person, and shall be preserved by the public officer with whom it shall be filed for six months after the election to which it refers. Any person not a candidate for any office or nomination who expends money or value to an amount greater than fifty dollars in any campaign for nomination or election, to aid in the election or defeat of any candidate or candidates, or party ticket, or measure before the people, shall within ten days after the election in which said money or value was expended, file with the Secretary of State in the case of a measure voted upon by the people, or of state or district offices for districts composed of one or more counties or with the county clerk for county offices, and with the city clerk, auditor or recorder for municipal offices, an itemized statement of such receipts and expenditures and vouchers for every sum paid in excess of five dollars, and shall at the same time deliver to the candidate or treasurer of the political organization whose success or defeat he has sought to promote, a duplicate of such statement and a copy of such vouchers. The books of account of every treasurer of any political party, committee or organization, during an election campaign, shall be open at all reasonable office hours to the inspection of the treasurer and chairman of any opposing political party or organization for the same electoral district; and his right of inspection may be enforced by writ of mandamus by any court of competent jurisdiction.

Secretary of State to Furnish Officials With Copies of This Act.

Section 13. The Secretary of State shall, at the expense of the state, furnish to the county clerk, and to the city and town clerks, auditors and recorders, copies of this act as a part of the election laws. In the filing of a nomination petition or certificate of nomination, the Secretary of State,

in the case of state and district offices for districts composed of one or more counties, and county clerks for county offices, and the city and town clerks, auditors or recorders for municipal offices, shall transmit to the several candidates, and to the treasurers of political committees, and to political agents, as far as they may be known to such officer, copies of this act, and also to any other person required to file a statement such copies shall be furnished upon application therefor. Upon his own information, or at the written request of any voter, said Secretary of State shall transmit to any other person believed by him or averred to be a candidate, or who may otherwise be required to make a statement, a copy of this act.

Failure of Candidate to Comply With Law—Complaint.

Section 14. The several officers with whom statements are required to be filed shall inspect all statements of accounts and expenses relating to nominations and elections filed with them within ten days after the same are filed; and if upon examination of the official ballot it appears that any person has failed to file a statement as required by law, or if it appears to any such officer that the statement filed with him does not conform to law, or upon complaint in writing by a candidate or by a voter that a statement filed does not conform to law or to the truth, or that any person has failed to file a statement which he is by law required to file, said officer shall forthwith in writing notify the delinquent person. Every such complaint filed by a citizen or candidate shall state in detail the grounds of objection, shall be sworn to by the complainant, and shall be filed with the officer within sixty days after the filing of the statement or amended statement. Upon the written request of a candidate or any voter, filed within sixteen days after any convention, primary or nominating election, said Secretary of State, county clerk, city or town clerk, auditor or recorder, as the case may be shall demand from any specified person or candidate a statement of all his receipts, and from whom received, disbursements and liabilities in connection with or in any way relating to the nomination or election concerned, whether it is an office to which a salary or compensation is attached or not, and said person shall thereupon be required to file such statement and comply with all the provisions relating to statements herein contained. Whoever makes a statement required by this act shall make oath attached thereto that it is in all respects correct, complete, and true, to the best of his knowledge and belief, and said verification shall be substantially the form herein provided.

Failure to File Statement—Action by County Attorney.

Section 15. Upon the failure of any person to file a statement within ten days after receiving notice under the preceding section, or if any statement filed as above discloses any violation of any provision of this act relating to corrupt practices in elections, or in any other provision of the election laws, the Secretary of State, the county clerk, or the city clerk, auditor or recorder, as the case may be, shall forthwith notify the county attorney of the county where said violation occurred and shall furnish him with copies of all papers relating thereto, and said county attorney shall within sixty days thereafter examine every such case, and if the evidence seems to him to be sufficient under the provisions of this act he shall in the name of the state forthwith institute such civil or criminal proceedings as may be appropriate to the facts.

Jurisdiction of District Court Over Violations of Law.

Section 16. The district court of the county in which any statement of accounts and expenses relating to nominations and elections should be filed, unless herein otherwise provided, shall have exclusive original jurisdiction of all violations of this act, and may compel any person who fails to file such a statement as required by this act, or who files a statement which does not conform to the provisions of this act in respect to its truth, sufficiency in detail or otherwise to file a sufficient statement, upon the application of the Attorney General or of the county attorney, or the petition of a candidate or of any voter. Such petition shall be filed in the district court within sixty days after such election if the statement was filed within the fifteen days required, but such a petition may be filed within thirty days after any payment not included in the statement so filed.

Record of Statements—Publication.

Section 17. All statements shall be preserved for six months after the election to which they relate, shall be public records subject to public inspection, and it shall be the duty of the officers having custody of the same to give certified copies thereof in like manner as of other public records. The totals of each statement, filed with him, with the name of the person or candidate filing it, shall be published in the next annual report of the Secretary of State, the county clerk or the city clerk, auditor or recorder, as the case may be.

Payments of Money in Name of Another Person.

Section 18. No person shall make a payment of his own money or of another person's money to any other person in connection with a nomination or election in any other name than that of the person who in truth supplies such money; nor shall any person knowingly receive such payment or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished; provided, if the money be received from the treasurer of any political organization it shall be sufficient to enter the same as received from said treasurer.

Promise to Procure Appointment or Election.

Section 19. No person shall, in order to aid or promote his nomination or election, directly or indirectly, himself or through any other person, promise to appoint another person, or promise to secure or aid in securing the appointment, nomination or election of another person to any public or private position or employment, or to any position of honor, trust or emolument, except that he may publicly announce or define what is his choice or purpose in relation to any election in which he may be called to take part, if elected, and if he is a candidate for nomination or election as a member of the legislative assembly he may pledge himself to vote for the people's choice for United States senator, or state what his action will be on such vote.

Public Officer or Employee not to Contribute Funds.

Section 20. No holder of a public position or office other than an office filled by the voters, shall pay or contribute to aid or promote the nomination or election of any other person to public office. No person shall invite, demand or accept payment or contribution from such holder of a public position or office for campaign purposes.

Disqualification of Delegates to Convention.

Section 21. No holder of a public position other than an office filled by the voters shall be a delegate to a convention for the election district that elects the officer or board under whom he directly or indirectly holds such position, nor shall he be a member of a political committee for such district.

Transfer of Convention Credential.

Section 22. No person shall invite, offer or effect the transfer of any convention credential in return for any payment of money or other valuable thing.

Inducing Person to be or not to be Candidate.

Section 23. No person shall pay, or promise to reward another in any manner or form for the purpose of inducing him to be or refrain from or cease being a candidate, and no person shall solicit any payment, promise or reward from another for such purpose.

What Demands or Requests Shall not be Made of Candidates.

Section 24. No person shall demand, solicit, ask or invite any payment or contribution for any religious, political charitable or other cause or organization supposed to be primarily or principally for the public good, from a person who seeks to be or has been nominated or elected to any office; and no such candidate or elected person shall make any such payment or contribution if it shall be demanded or asked during the time he is a candidate for nomination or election to or an incumbent of any office. No payment or contribution for any purpose shall be made a condition precedent to the putting of a name on any caucus or convention ballot or nomination paper or petition, or to the performance of any duty imposed by law on a political committee. No person shall demand, solicit, ask or invite any candidate to subscribe to the support of any club or organization, to buy tickets to any entertainment or ball, or to subscribe for or pay for space in any book, program, periodical or other publication; if any candidate shall make any such payment or contribution with apparent hope or intent to influence the result of the election, he shall be guilty of a corrupt practice; but this section shall not apply to the soliciting of any business advertisement for insertion in a periodical in which such candidate was regularly advertising prior to his candidacy nor to ordinary business advertising nor to his regular payment to any organization, religious, charitable or otherwise of which he may have been a member, or to which he may have been a contributor, for more than six months before his candidacy nor to ordinary contributions at church services.

Corporations not to Make Campaign Contributions.

Section 25. No corporation, and no person, trustee, or trustees owning or holding the majority of the stock of a corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustees, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, water, cemetery, or crematory company, or any company having the right to take or condemn land or to exercise franchise in public ways granted by the state or by any county, city or town, shall pay or contribute in order to aid, promote or prevent the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party or organization.

No person shall solicit or receive such payment or contribution from such corporation or such holder of a majority of such stock.

Section 26. Any person or candidate who shall either by himself or by any other person, either before or after an election, or while such person or candidate is seeking a nomination or election, directly or indirectly, give or provide, or pay, wholly or in part, the expenses of giving or providing any meat or drink or other entertainment or provision, clothing, liquors, cigars or tobacco, to or for any person for the purpose of or with intent on hope to influence that person or any other person to give or refrain from giving his vote at such election to or for any candidate or political party ticket, or measure before the people, or on account of such persons or any other person having voted or refrained from voting for any candidate or the candidates of any political party or organization or measure before the people, or being about to vote or refrain from voting at such election shall be guilty of treating. Every elector who accepts or takes any such meat, drink, entertainment, provision, clothing, liquor, cigars or tobacco, shall also be guilty of treating; and such acceptance shall be a ground of challenge to his vote and of rejecting his vote on a contest.

Challenge of Electors.

Section 27. Whenever any person's right to vote shall be challenged, and he has taken the oath prescribed by the statutes, and if it is at a nominating election, then it shall be the duty of the clerks of election to write in the poll books at the end of such person's name the words "challenged and sworn," with the name of the challenger. Thereupon the chairman of the board of judges shall write upon the back of the ballot offered by such challenged voter the number of his ballot, in order that the same may be identified in any future contest of the results of the election, and be cast out if it shall appear to the court to have been for any reason wrongfully or illegally voted for any candidate or on any question. And such marking of the name of such challenged voter, nor the testimony of any judge or clerk of election in reference thereto, or in reference to the manner in which said challenged person voted, if said testimony shall be given in the course of any contest, investigation or trial wherein the legality of the vote of such person is question for any reason, shall not be deemed a violation of section 8130, Revised Codes of Montana.

Influencing or Coercing Voters.

Section 28. Every person who shall, directly or indirectly, by himself or any other person in his behalf, makes use of or threaten to make use of any force, coercion, violence, restraint, or undue influence, or inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting for any candidate or the ticket of any political party, or any measure before the people, or any person who, being a minister, preacher or priest, or any officer of any church, religious or other corporation or organization, otherwise than by public speech or print, shall urge, persuade or command any voter to vote or refrain from voting for or against any candidate or political party ticket or measure submitted to the people, for or on account of his religious duty, or in the interest of any corporation, church or other organization, or who shall by abduction, duress or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election, or shall

thereby compel, induce or prevail upon any elector to give or to refrain from giving his vote at any election, shall be guilty of undue influence, and shall be punished as for a corrupt practice.

Bets or Wagers on Election Results.

Section 29. Any candidate who, before or during any election campaign, makes any bet or wager of anything of pecuniary value, or in any manner becomes a party to any such bet or wager on the result of the election in his electoral district or in any part thereof, or on any event or contingency relating to any pending election, or who provides money or other valuable to be used by any person betting or wagering upon the results of any impending election, shall be guilty of a corrupt practice. Any person who for the purpose of influencing the result of any election makes any bet or wager of anything of pecuniary value on the result of such election in his electoral district or any part thereof, or of any pending election, or on any event or contingency relating thereto, shall be guilty of a corrupt practice, and in addition thereto any such act shall be ground of challenge against his right to vote.

Personating Another Elector.

Section 30. Any person shall be deemed guilty of the offense of personating who, at any election, applies for a ballot in the name of some other person, whether it be that of a person living or dead, or of a fictitious person, or who having voted once at an election applies at the same election for a ballot in his own name; and on conviction thereof such person shall be punished by imprisonment in the penitentiary at hard labor for not less than one nor more than three years.

Corrupt Practice—What Constitutes.

Section 31. Any person shall be guilty of a corrupt practice within the meaning of this act if he expends any money for election purposes contrary to the provisions of any statute of this state, or if he is guilty of treating, undue influence, personation, the giving or promising to give, or offer of any money or valuable thing to any elector with intent to induce such elector to vote for or to refrain from voting for any candidate for public office, or the ticket of any political party or organization, or any measure submitted to the people, at any election, or to register or refrain from registering as a voter at any state, district, county, city, town, village or school district election for public offices or on public measures. Such corrupt practice shall be deemed to be prevalent when instances thereof occur in different election districts similar in character and sufficient in number to convince the court before which any case involving the same may be tried that they were general and common, or were pursuant to a general scheme or plan.

Compensating Voter for Loss of Time—Badges and Insignia.

Section 32. It shall be unlawful for any person to pay another for any loss or damage due to attendance at the polls, or in registering or for the expense of transportation to or from the polls. No person shall pay for personal service to be performed on the day of a caucus, primary, convention, or any election, for any purpose connected therewith, tending in any way, directly or indirectly, to affect the result thereof, except for the hiring of persons whose sole duty is to act as challengers and watch the count of official ballots. No person shall buy, sell, give or provide any political

badge, button or other insignia to be worn at or about the polls on the day of any election, and no such political badge, button or other insignia shall be worn at or about the polls on any election day.

Publications in Newspapers and Periodicals.

Section 33. No publisher of a newspaper or other periodical shall insert, either in its advertising or reading columns, any paid matter which is designed or tends to aid, injure or defeat any candidate or any political party or organization, or measure before the people, unless it is stated therein, that it is a paid advertisement, the name of the chairman or secretary, or the names of the other officers of the political or other organization inserting the same, or the name of some voter who is responsible therefor, with his residence and the street number thereof, if any, appear in such advertisement in the nature of a signature. No person shall pay the owner, editor, publisher or agent of any newspaper or other periodical to induce him to editorially advocate or oppose any candidate for nomination or election, and no such owner, editor, publisher or agent shall accept such payment. Any person who shall violate any of the provisions of this section shall be punished as for a corrupt practice.

Solicitation of Votes on Election Day.

Section 34. It shall be unlawful for any person at any place on the day of any election to ask, solicit, or in any manner try to induce or persuade any voter on such election day to vote for or refrain from voting for any candidate, or the candidates or ticket of any political party or organization, or any measure submitted to the people, and upon conviction thereof he shall be punished by a fine of not less than five dollars nor more than one hundred dollars for the first offense, and for the second and each subsequent offense occurring on the same or different election days, he shall be punished by fine as aforesaid, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment.

Circulation of Letters, Posters, Bills, etc.

Section 35. It shall be unlawful to write, print, or circulate through the mails or otherwise any letter, circular, bill, placard or poster relating to any election or to any candidate at any election, unless the same shall bear on its face the name and address of the author, and of the printer and publisher thereof; and any person writing, printing, publishing, circulating, posting, or causing to be written, printed, circulated posted or published any such letter, bill, placard, circular or poster as aforesaid, which fails to bear on its face the name and address of the author and of the printer or publisher shall be guilty of an illegal practice, and shall, on conviction thereof, be punished by a fine of not less than ten dollars nor more than one thousand dollars. If any letter, circular, poster, bill, publication or placard shall contain any false statement or charges reflecting on any candidate's character, morality or integrity, the author thereof and every person printing or knowingly assisting in the circulation shall be guilty of political criminal libel and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one nor more than three years. If the person charged with such crime shall prove on his trial that he had reasonable ground to believe such charge was true and did believe it was true, and that he was not actuated by malice in making such publica-

tion, it shall be a sufficient defense to such charge. But in that event, and as a part of such defense, the author and the printer or publisher or other person charged with such crime shall also prove that, at least fifteen days before such letter, circular, poster, bill or placard containing such false statement or statements was printed or circulated, he or they caused to be served personally and in person upon the candidate to whom it relates a copy thereof in writing, and calling his attention particularly to the charges contained therein, and that, before printing, publishing or circulating such charges, he received and read any denial, defense or explanation, if any, made or offered to him in writing by the accused candidate within ten days after the service of such charge upon the accused person.

Filing of Statement of Expenses by Candidate.

Section 36. The name of a candidate chosen at a primary nominating election or otherwise shall not be printed on the official ballot for the ensuing election unless there has been filed by or on behalf of said candidate the statements of accounts and expenses relating to nominations required by this act, as well as a statement by his political agent and by his political committee or committees in his behalf, if his statement discloses the existence of such agent, committee or committees. The officer or board intrusted by law with the preparation of the official ballots for any election shall, as far as practicable, warn candidates of the danger of the omission of their names by reason of this provision, but delay in making any such statement beyond the time prescribed shall not preclude its acceptance or prevent the insertion of the name on the ballot if there is reasonable time therefor after the receipt of such statements. Any such vacancy on the ballot shall be filled by the proper committee of his political party in the manner authorized by law, but not by the use of the name of the candidate who failed to file such statements. No person shall receive a certificate of election until he shall have filed the statements required by this act.

Inducement to Accept or Decline Nomination.

Section 37. It shall be unlawful for any person to accept, receive, or pay money or any valuable consideration for becoming or for refraining from becoming a candidate for nomination or election, or by himself or in combination with any other person or persons to become a candidate for the purpose of defeating the nomination or election of any other person and not with a bona fide intent to obtain the office. Upon complaint made to any district court if the judge shall be convinced that any person has sought the nomination or seeks to have his name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive, and that his candidacy for the nomination is not in good faith, the judge shall forthwith issue his writ of injunction restraining the officer or officers whose duty it is to prepare the official ballots for such nominating election from placing the name of such person thereon as a candidate for nomination to any office. In addition thereto the court shall direct the county attorney to institute criminal proceedings against such person or persons for corrupt criminal proceedings against such person or persons for corrupt practice, and upon conviction thereof he and any person or persons combining with him shall be punished by a fine of not more than one thousand dollars, or imprisonment in the county jail for not more than one year.

Forfeiture of Nomination or Office for Violation of Law—When not Worked.

Section 38. Where, upon the trial of any action or proceeding under the provisions of this act for the contest of the right of any person declared nominated or elected to any office, or to annul or set aside such nomination or election, or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate, or with his knowledge or consent, or was committed without his sanction or connivance, and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate, or that the offense or offenses complained of were trivial, unimportant and limited in character, and that in all other respects his participation in the election was free from such offenses or illegal acts, or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation, or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith, and under the circumstances it seems to the court to be unjust that the said candidate shall forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of such candidate shall not by reason of such offense or omission complained of be void, nor shall the candidate be removed from or deprived of his office.

Punishment for Violation of Act.

Section 39. If, upon the trial of any action or proceeding under the provisions of this act, for the contesting of the right of any person declared to be nominated to an office, or elected to an office, or to annul and set aside such election, or to remove any person from his office, it shall appear that such person was guilty of any corrupt practice, illegal act, or undue influence in or about such nomination or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only exception to this judgment shall be that provided in section 38 of this act. Such judgment shall not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts.

Time for Commencing Contest.

Section 40. Any action to contest the right of any person declared elected to an office, or to annul and set aside such election, or to remove from or deprive any person of an office of which he is the incumbent, for any offense mentioned in this act, must, unless a different time be stated, be commenced within forty days after the return day of the election at which such offense was committed, unless the ground of the action or proceeding is for the illegal payment of money or other valuable things subsequent to the filing of the statements prescribed by this act, in which case the action or proceeding may be commenced within forty days after the discovery by the complainant of such illegal payment. A contest of the nomination or office of Governor or representative or senator in Congress must be commenced within twenty days after the declaration of the result of the election, but this shall not be construed to apply to any contest before the legislative assembly.

Court Having Jurisdiction of Proceedings.

Section 41. An application for filing a statement, payment of a claim or correction of an error or false recital in a statement filed, or an action

or proceeding to annul and set aside the election of any person declared elected to an office, or to remove or deprive any person of his office for an offense mentioned in this act, or any petition to excuse any person or candidate in accordance with the power of the court to excuse as provided in section 38 of this act, must be made or filed in the district court of the county in which the certificate of his nomination as a candidate for the office to which he is declared nominated or elected is filed or in which the incumbent resides.

Disqualification of Person Convicted to Hold Office.

Section. 42. A candidate nominated or elected to an office, and whose nomination or election thereto has been annulled and set aside for any offense mentioned in this act, shall not, during the period fixed by law as the term of such office, be elected or appointed to fill any office or vacancy in any office or position of trust, honor or emolument under the laws of the state of Montana or of any municipality therein. Any appointment or election to any office or position of trust, honor or emolument made in violation of or contrary to the provisions of this act shall be void.

Duty of County Attorney on Violation of Act.

Section 43. If any county attorney shall be notified by any officer or other person of any violation of any of the provisions of this act within his jurisdiction, it shall be his duty forthwith to diligently inquire into the facts of such violation, and if there is reasonable ground for instituting a prosecution it shall be the duty of such county attorney to file a complaint or information in writing, before a court of competent jurisdiction, charging the accused person with such offense; if any county attorney shall fail or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit his office. It shall be the duty of the county attorney, under penalty of forfeiture of his office, to prosecute any and all persons guilty of any violation of the provisions of this act, the penalty of which is fine or imprisonment, or both, or removal from office.

Declaration of Result of Election After Rejection of Illegal Votes.

Section 44. If, in any case of a contest, on the ground of illegal votes, it appears that another person than the one returned has the highest number of legal votes, after the illegal votes have been eliminated, the court must declare such person nominated or elected, as the case may be.

Grounds for Contest of Nomination.

Section 45. Any elector of the state, or of any political or municipal division thereof, may contest the right of any person to any nomination or office for which such elector has the right to vote, for any of the following causes:

1. On the ground of deliberate, serious and material violation of any of the provisions of this act, or of any other provision of the law relating to nominations or elections.
2. When the person whose right was contested was not, at the time of the election, eligible to such office.
3. On account of illegal votes or an erroneous or fraudulent count or canvass of votes.

Corrupt practices acts of 1913, section 45, permitting the contest of a nomination, was passed in anticipation of the passage of the general primary election law. *Cadle v. Town of Baker* (Mont.), 149 Pac. 960.

This section permits a nomination as well as an election to be made the subject of contest. *Cadle v. Town of Baker* (Mont.), 149 Pac. 960.

Nomination or Election not to be Vacated When.

Section 46. Nothing in the third ground of contest specified in section 45 is to be so construed as to authorize a nomination or election to be set aside on account of illegal votes, unless it appear, either that the candidate or nominee whose right is contested had knowledge of, or connived at such illegal votes, or that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same nomination or office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

Allegation and Evidence of Corrupt Practices.

Section 47. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that in one or more specified voting precincts, illegal votes were given to the person whose nomination or election is contested, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of any illegal votes unless the party contesting such election deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in such statement, if he did not know and by reasonable diligence was unable to learn of such additional illegal votes and by whom they were given, before delivering such written list.

Petition Contesting Nomination or Election.

Section 48. Any petition contesting the right of any person to a nomination or election shall set forth the name of every person whose election is contested, and the grounds of the contest, and shall not thereafter be amended, except by leave of the court. Before any proceedings thereon the petitioner shall give bond in the state in such sum as the court may order, not exceeding two thousand dollars, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs, disbursements and attorney's fees that may be awarded against him if he shall not prevail. If the petitioner prevails, he may recover his costs, disbursements and reasonable attorney's fees against the contestee. But costs, disbursements and attorney's fees, in all such cases, shall be in the discretion of the court, and in case judgment is rendered against the petitioner it shall also be rendered against the sureties on the bond. On the filing of any such petition the clerk shall immediately notify the judge of the court, and issue a citation to the person whose nomination or office is contested, citing them to appear and answer not less than three nor more than seven days after the date of filing the petition, and the court shall hear said cause, and every such contest shall take precedence over all other business on the court docket and

shall be tried and disposed of with all convenient dispatch. The court shall always be deemed in session for the trial of such cases.

Hearing of Contest.

Section 49. The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee shall be made a party to the proceedings on such petition; and no person other than said parties and their attorneys shall be heard thereon, except by order of the court. If more than one petition is pending, or the election of more than one person is contested, the court may, in its discretion, order the cases to be heard together, and may apportion the costs, disbursements and attorney's fees between them, and shall finally determine all questions of law and fact, save only that the judge may in his discretion empanel a jury to decide on questions of fact. In the case of a contested nomination or election for senator or representative in the legislative assembly, or for senator or representative in Congress, the court shall forthwith certify its findings to the Secretary of State to be by him transmitted to the presiding officer of the body in question. In the case of other nominations or elections, the court shall forthwith certify its decision to the board or official issuing certificates of nomination or election, which board or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by such decision. If judgment of ouster against a defendant shall be rendered, said judgment shall award the nomination or office to the person receiving next the highest number of votes, unless it shall be further determined in the action, upon appropriate pleading and proof by the defendant, that some act has been done or committed which would have been ground in a similar action against such person, had he received the highest number of votes for such nomination or office, for a judgment of ouster against him; and if it shall be so determined at the trial, the nomination or office shall be by the judgment declared vacant, and shall thereupon be filled by a new election, or by appointment, as may be provided by law regarding vacancies in such nomination or office.

This section violates Constitution, article IX, section 13, if it permits a candidate who did not receive the highest number of legal votes to be declared elected upon the oust-

ing of the one who received such votes. *Cadle v. Town of Baker (Mont.)*, 149 Pac. 960.

Corporations Violating Act.

Section 50. In like manner as prescribed for the contesting of an election, any corporation organized under the laws of or doing business in the state of Montana may be brought into court on the ground of deliberate, serious and material violation of the provisions of this act. The petition shall be filed in the district court in the county where said corporation has its principal office, or where the violation of law is averred to have been committed. The court, upon conviction of such corporation, may impose a fine of not more than ten thousand dollars, or may declare a forfeiture of the charter and franchises of the corporation if organized under the laws of this state, or if it be a foreign corporation may enjoin said corporation from further transacting business in this state, or by both such fine and forfeiture or by both such fine and injunction.

Punishment for Violation of Act.

Section 51. Whoever violates any provision of this act, the punishment for which is not specially provided by law, shall on conviction there-

of be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.

Trial—Privilege of Witnesses.

Section 52. Proceedings under this act shall be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue such trial if the ends of justice may be thereby more effectually secured, and in case of such continuance or postponement, the court may impose costs in its discretion as a condition thereof. No petition shall be dismissed without the consent of the county attorney unless the same shall be dismissed by the court. No person shall be excused from testifying or producing papers or documents on the ground that his testimony or the production of papers or documents will tend to criminate him; but no admission, evidence or paper made or advanced or produced by such person shall be offered or used against him in any civil or criminal prosecution or any evidence that is the direct result of such evidence or information that he may have so given except in a prosecution for perjury committed in such testimony.

Form of Complaint.

Section 53. A petition or complaint filed under the provisions of this act shall be sufficient if it is substantially in the following form:

In the District Court of the Judicial District, for the County of,
State of Montana.

A. B. (or A. B. and C. D.), Contestants,

vs.

E. F., Contestee.

The petition of contestant (or contestants) above named alleges:

That an election was held (in the state, district, county or city of), on the day of A. D. 19.., for the (nomination of a candidate for) (or election of a) (state the office).

That and were candidates at said election, and the board of canvassers has returned the said as being duly nominated (or elected) at said election.

That contestant A. B. voted (or had a right to vote, as the case may be) at said election (or claims to have had a right to be returned as the nominee or officer elected or nominated at said election, or was a candidate at said election, as the case may be), and said contestant C. D. (here state in like manner the right of each contestant).

And said contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

Wherefore, your contestants pray that it may be determined by the court that said, was not duly nominated (or elected) and that said election was void (or that the said A. B. or C. D., as the case may be) was duly nominated (or elected) and for such other and further relief as to the court may seem just and legal in the premises.

Said complaint shall be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases.

Form of Statement of Expenses.

Section 54. The statement of expenses required from candidates and others by this act shall be in substantially the following form:

State of Montana,
County of, } ss.

I,, having been a candidate (or expended money) at the election for the (state) (district) (county) (city) of on the day of A. D. 19.., being first duly sworn, on oath do say: That I have carefully examined and read the return of my election expenses and receipts hereto attached, and to the best of my knowledge and belief that return is full, correct and true.

And I further state on oath that, except as appears from this return, I have not, and to the best of my knowledge and belief, no person, nor any club, society or association, has on my behalf, whether authorized by me or not, made any payment, or given, promised, or offered any reward, office, employment or position, public or private, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said nomination or election.

And I further state on oath, that, except as specified in this return I have not paid any money, security, or equivalent for money, nor has any money or equivalent for money to my knowledge or belief been paid, advanced, given or deposited by any one to or in the hands of myself or any other person for my nomination or election or for the purpose of paying any expenses incurred on my behalf on account or in respect of the conduct or management of the said election.

And I further state on oath that I will not, except so far as I may be permitted by law, at any future time make or be a party to the making or giving of any payment, reward office, position or employment, or valuable consideration for the purpose of defraying any such expenses or obligation as herein mentioned for or account of my nomination or election, or provide or be a party to the providing of any money, security or equivalent for money for the purpose of defraying any such expense.

(Signature of Affiant).....

Subscribed and sworn to before me by the above named on the day of A. D. 19...

Attached to said affidavit shall be a full and complete account of the receipts, contributions and expenses of said affiant, and of his supporters of which he has knowledge, with numbered vouchers for all sums and payments for which vouchers are required as to all money expended by affiant. The affidavit and account of the treasurer of any committee or any political party or organization shall be as nearly as may be in the same form, and so also shall be the affidavit of any person who has received or expended money in excess of the sum of fifty dollars to aid in securing the nomination or election or defeat of any candidate, or of any political party or organization, or of any measure before the people.

False Oaths or Affidavits—Perjury.

Section 55. Any person who shall knowingly make any false oath or affidavit where an oath or affidavit is required by this law shall be deemed guilty of perjury and punished accordingly.

Adopted by the people at the November election in 1912. See Laws 1913, pp. 593-616.

Sections 38, 39, 40, construed in connection with this section, do not authorize the contest of an election for the determination of the location of a county seat. The words "persons" or "public office" are used in the same sense as in Revised Codes, sections 7234,

7238. *Cadle v. Town of Baker* (Mont.), 149 Pac. 960.

While the corrupt practices act is in force by virtue of a vote by the people, it has no greater efficacy as a statute than if it had been enacted by the legislature; in other words, it cannot affect any provision of the Constitution. *State ex rel. Smith v. District Court*, 50 Mont. 137, 145 Pac. 721.

CHOICE OF UNITED STATES SENATORS.

A bill to propose by initiative a law to instruct the members of the legislative assembly to vote and elect the candidates selected by the people for United States senator from Montana.*

Be it enacted by the People of the State of Montana:

Section 1. That we, the people of the state of Montana, hereby instruct our representatives and senators in our legislative assembly, as such officers, to vote for and elect the candidates for United States senator from this state who receive the highest number of votes at our general elections.

GIFTS TO EDUCATIONAL AND CHARITABLE INSTITUTIONS.

Chapter 17, Laws 1913, page 16.

"An act to authorize and empower the state of Montana, the University of Montana, the state Normal College, the State Orphans' Home, the State School for the Deaf and Blind, the State School of Mines, the State Reform School, the Soldiers' Home, the Montana State Tuberculosis Sanitarium, the State Asylum for the Insane, the State Penitentiary, and, any and all institutions now created or established, or which may hereafter be created or established, supported in whole or in part by the state of Montana for any purpose, to receive and take property, real or personal, by donation, gift, grant, devise or bequest, for the use and benefit of the state of Montana or of such institutions; and to authorize and permit, gifts, grants, donations, bequests, devises and testamentary dispositions of property to be made to the state of Montana, and to any of said institutions."

Be it enacted by the Legislative Assembly of the State of Montana:

State Institutions Which may Take by Gift, Bequest or Grant.

Section 1. That the state of Montana, the University of Montana, the State Normal College, the State Orphans' Home, the State School for the Deaf and Blind, the State School of Mines, the State Reform School, the Soldiers' Home, the Montana State Tuberculosis Sanitarium, the State Asylum for the Insane, the State Penitentiary, and any and all Institutions now created or established, or which may hereafter be created or established, and supported in whole or in part by the state of Montana for any purpose, are hereby empowered and given the right to accept, receive, take, hold, own and possess gifts, donations, grants, devises or bequests of real or personal property, from any source whatsoever; and said gifts, donations, grants, bequests or devises may be made direct to

*Adopted by the people at the November election in 1912. See Laws 1913, p. 617.

the state of Montana, or in the name of any of said institutions, or to any officer or board of said institutions, or to any person in trust for said institutions, but in the event the same shall be made direct to any such institution, or to any officer or board of any such institution, such gift, donation, grant, devise, or bequest shall be construed as a gift, donation, grant, devise or bequest to the state of Montana and shall be administered and used by the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed or devised, and in the event no particular purpose is mentioned in such gift, grant, devise or bequest then the same shall be used for the general support, maintenance or improvement of such institution by the state of Montana.

Persons Who may Make Gift to State Institution.

Section 2. That a donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of eighteen years of sound mind to the state of Montana, the University of Montana, the State Normal College, the State Orphans' Home, the State School for the Deaf and Blind, the State School of Mines, the State Reform School, the Soldiers' Home, the State Asylum for the Insane, the State Penitentiary, and any and all institutions now created or established or which may hereafter be created or established, and supported in whole or in part by the state of Montana for any purpose. And any person, corporation or association of persons may make any gift, donation or grant of property, real or personal, to the state of Montana, or to any of the institutions above named or referred to; but in the event and gift, donation, grant, devise or bequest shall be made to any such institution, or to any officer or board of any such institution, the same shall be construed as a gift, donation, grant, devise or bequest to the state of Montana, and shall be administered and used for the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed or devised, and in the event no particular purpose is mentioned in such gift, grant, devise or bequest, then the same shall be used for the general support, maintenance or improvement of such institution by the state of Montana.

Section 3. All acts and parts of acts in conflict with this act are hereby repealed.

Section 4. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved February 14, 1913.

BONDS FOR EDUCATIONAL INSTITUTIONS.

Chapter 145, Laws 1909, page 252.

"An act authorizing and empowering the State Board of Examiners to issue bonds provided for by an act entitled, 'An act to authorize the state of Montana to become indebted in excess of one hundred thousand (\$100,000) dollars, and to provide for the issuance of bonds in the name of the state for the redemption of bonds heretofore executed and issued by the State Board of Land Commissioners for the use and benefit of various state educational institutions; and also to make whole the permanent funds of the various state educational institutions,'—approved March 1, 1907."

Be it enacted by the Legislative Assembly of the State of Montana:

Issuance of Redemption Bond by State Board of Examiners.

Section 1. The State Board of Examiners of the state of Montana is hereby authorized and empowered to issue bonds provided for by an act entitled, "An act to authorize the state of Montana to become indebted in excess of one hundred thousand (\$100,000) dollars, and to provide for the issuance of bonds in the name of the state for the redemption of bonds heretofore executed and issued by the State Board of Land Commissioners for the use and benefit of various state educational institutions; and also to make whole the permanent funds of the various state educational institutions"—approved March 1, 1907, to the amount of one hundred and fifty-eight thousand (\$158,000) dollars in addition to the bonds heretofore issued by the State Board of Examiners under the provisions of said act, amounting to three hundred and eighty-four thousand (\$384,000) dollars, making the total amount of bonds issued and to be issued under the provisions of said act five hundred and forty-two thousand (\$542,000) dollars.

Denominations of Bonds and Rate of Interest.

Section 2. Said bonds shall be issued in denominations of one thousand (\$1,000) dollars each, and shall bear date January 1, 1910, and become due twenty years from the date of issuance, and be redeemable and payable at the option of the state in ten years from their date, and shall bear interest at the rate of four per cent (4%), per annum, payable semi-annually on the 1st day of January and July of each year, at the office of the state treasurer of the state of Montana.

Conditions of Bonds.

Section 3. Said bonds shall be conditioned as provided in section 4 of said act.

Sale of Bonds.

Section 4. It shall be the duty of the State Board of Examiners to give notice by advertising for not less than two insertions in one newspaper published in the city of Helena, Montana, and in one newspaper published in the city of New York, that it will on a date to be stated in such notices, sell the bonds of the state of Montana to the amount of one hundred and fifty-eight thousand (\$158,000) dollars to the person or persons offering the best premium therefor; provided, that the State Board of Land Commissioners shall have the preference right of investing in such state

bonds, at par, any moneys belonging to the permanent school fund, permanent university fund, permanent agricultural college fund, permanent normal school fund, permanent school of mines fund, permanent reform school fund, or the permanent deaf and dumb school fund, to the extent of the full amount or any part or portion of such bond issue.

Disposal of Proceeds of Sale.

Section 5. The moneys derived from the sale of such state bonds shall be deposited to the credit of the maintenance income funds of the various state educational institutions as follows:

Normal School Maintenance Income Fund.....	\$65,000
University Maintenance Income Fund.....	50,000
Deaf and Dumb Asylum Maintenance Income Fund.....	3,000
School of Mine Maintenance Income Fund.....	30,000
Agricultural College Maintenance Income Fund.....	10,000

FUNDS OF EDUCATIONAL INSTITUTIONS.

Chapter 120, Laws 1909, page 168.

An act to provide for the deposit and disbursement of money received from the investment of the permanent funds of the state educational institutions, and from the leasing of lands granted by the federal government to such institutions, to be known and designated as the "Interest and Income Funds" of each of such institutions; reducing the appropriations from the general fund; and providing for reports by said educational institutions of all moneys received from appropriations made to them under the laws of the United States.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. All moneys received from the investment of the permanent funds of the University of Montana, the Agricultural College of Montana, School of Mines of Montana, State Normal School of Montana, State Reform School of Montana, and Deaf and Dumb School of Montana, and all money received from the leasing of lands granted to said institutions shall at the close of each calendar month be deposited with the State Treasurer of Montana for each of such institutions to the credit of what shall be known and designated as the "Interest and Income Fund" of each of said institutions.

Section 2. The money received by the State Treasurer under the provisions of section 1 of this act shall be paid out by him only on warrant issued by the state auditor in payment of claims for expenses actually incurred for the support and maintenance of the institution filing the same, and the State Auditor shall not draw warrants on said interest and income funds for any such claims until after the claim has been duly filed with and audited and approved by the State Board of Examiners.

Section 3. In the payment of claims presented by any of the institutions named in section 1 of this act, the interest and income funds mentioned in said section 1, so far as available for the payment of the items set out in said claim, shall be exhausted before any warrants shall be drawn against the appropriation made by the state out of the general fund for the maintenance of the institution filing the claim.

Section 4. That on the 1st of March, 1st of June, 1st of September, and 1st of December of each year the executive board of each of the in-

stitutions named in section 1 of this act shall prepare or cause to be prepared a detailed statement showing all the expenses incurred and all disbursements made by such institution during the preceding quarter, and the purposes for which the same were made, out of funds, if any, appropriated by the United States government for the maintenance and support of any such institutions. Such reports shall be signed and verified under oath by the president of the executive board and treasurer of the institution making the same and shall be filed with the State Board of Examiners.

Section 5. The executive board of each of the institutions named in section 1 of this act shall, at the end of November of each even numbered year beginning with November 30, 1910, prepare or cause to be prepared a full detailed statement, showing all moneys, if any, received by such institution from the United States government, and of the moneys received from the investment of the permanent school funds of the institutions, and of moneys received from the leasing of lands granted to such institutions and all money appropriated by the state of Montana out of the general fund for such institution, and all money received from tuitions or any other sources whatever during the two years preceding the 30th day of November.

Such report shall also show all disbursements made out of the funds received from each of the sources mentioned above in this section and the purposes for which each disbursement was made during such two years. Said reports shall also contain a statement showing the amount of money, if any, that will be received from the United States government for the maintenance and support of the institution for the next ensuing two years, and also an estimate of the amounts of money that will be received for the maintenance of institution from the investment of the permanent fund thereof and from the leasing of lands granted to the institution for the next ensuing two years. Said reports shall be signed and verified under oath by the president of the executive board and treasurer of the institution and filed with the Governor of the state of Montana within ten days from and after November 30th of each even-numbered year.

Section 6. All acts and parts of acts in conflict herewith are hereby repealed.

Section 7. This act shall be in full force and effect from and after its passage.

Approved March 8, 1909.

INVESTMENT OF COMMON SCHOOL FUNDS.

Chapter 103, Laws 1915, page 229.

"An act to authorize and empower the State Land Board to invest the income derived from common school funds in interest-bearing warrants upon the general fund of the state."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The State Land Board is hereby authorized and empowered to invest the income derived from the common school fund in interest-bearing warrants upon the general fund of the state, provided, such warrants are issued to be redeemed on or before the first day of February of the year succeeding their issue.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1915.

INVESTMENT OF SCHOOL AND OTHER FUNDS.*

A bill proposed by initiative petition a law, "Providing for the safe investment of the state permanent common school funds, and all other state educational, charitable and penal institution funds in the securities herein designated, for the prompt collection of interest thereon, providing a method of procedure in making said investments to guard and protect such funds and prescribing the duties and obligations of the various officers of the state and the several counties to whom such funds are intrusted."

Be it enacted by the People of the State of Montana:

Investments to be Made in Bonds, Warrants and Mortgages.

Section 1. All moneys belonging to the permanent common school and all other permanent state educational, charitable and penal institution funds must be invested by the State Board of Land Commissioners in bonds of school districts, within the state of Montana, provided, that before such moneys are so invested, the said board must be satisfied that the bonds so to be negotiated are the only bonds issued by the school district, and that the outstanding indebtedness of said district does not exceed three per cent of the valuation of the property within it; in bonds of the state of Montana or of the United States; in interest-bearing warrants upon the general funds of the state; in any state capital building bonds of the state of Montana, now issued, or which may be hereafter issued; in bonds of irrigation districts within the state of Montana; in first mortgages on good, improved farm land in the state, in the manner provided herein.

Applications for Loans.

Section 2. In order to secure continuous investment, so far as possible, for the moneys of the above-described funds, it shall be the duty of the State Board of Land Commissioners to fill the applications for loans on farm lands received from the different counties, as rapidly as such funds are available, and in the order in which they are received, provided, however, that if enough of such moneys remain on hand in the state treasury uncalled for, to warrant them doing so, the State Board of Land Commissioners shall divide such moneys among the organized counties of the state, in proportion to the population, as nearly as may be, subject to the following provisions:

(a) On or before the 25th day of May and November in each year, the State Board of Land Commissioners shall cause to be made an estimate of the amount of permanent school and other state educational, charitable and penal institution funds which shall be on hand and uninvested by the first day of July and January next ensuing.

*Note by Secretary of State.—This bill was passed by the people under the initiative at the general election in 1914. The Attorney General has given his opinion

that the act is unconstitutional and inoperative. It has not been tested in the courts.

(b) The amount of such estimate shall be apportioned among the several organized counties of the state in proportion to population, and the county auditors of the several counties shall be forthwith notified of the amounts so apportioned.

(c) On receiving said notice, if no applications for loan of such fund upon first mortgages on improved farm lands, in an amount sufficient to cover said estimate, shall be on file in the office of the county auditor, he shall cause notice to be published in the newspapers designated by the Board of County Commissioners as the papers in which to publish the proceedings of the county commissioners, which notice shall state the amount of money which will be in the county treasury for such loans and the terms upon which same may be loaned, and that applications therefor will be received at the office of the county auditor, which notice shall be published at the expense of the county, at least once in each week for four successive weeks, commencing as near the first day of June and December as may be possible. Should applications sufficient to take up all or any of such fund be received before the expiration of such period publication of said notice, the publication of same may be discontinued.

(d) If no application for loans of such funds shall be received by the county auditor prior to the first day of January or July, as the case may be, he shall promptly notify the State Board of Land Commissioners to that effect. If applications shall be received by the county auditor in excess of the amount of the estimate for such county, the auditor shall, on or before the first day of July, or January, as the case may be, notify the said commissioners of the amount of applications so received.

(e) If the total amount of applications for loans of such funds, as certified by the several county auditors to the State Board of Land Commissioners, shall exceed the amount of moneys in said funds, on hand for distribution, the said Board of Land Commissioners shall distribute said funds by sending to the counties applying for loans less than the apportionment of the full amount of their several applications, and shall divide the remainder of such apportionment among the counties applying for more than the amounts apportioned to them separately, proportionately.

(f) If the amount of the applications certified by the several county auditors to the State Board of Land Commissioners shall be less than the full amount of such funds on hand for distribution, such funds shall be distributed in proportion to the population, among the several counties.

(g) If the amount of applications certified by the several county auditors shall equal the amount of the moneys on hand for distribution, the same shall be distributed accordingly.

Duties and Obligations of the County Treasurer.

Section 3. All moneys sent by the State Board of Land Commissioners to the several counties, under the provisions of this law, shall be delivered to the county treasurer, who shall execute triplicate receipts therefor; one to be filed with the county auditor, one with the state treasurer, and one with the Board of Land Commissioners.

It shall be the duty of the county treasurer to receive, collect and account for all moneys belonging to said funds so received from the state, or from individuals in payment of principal and interest on loans made by the county, and said county treasurer shall, at all times, be liable under his official bond to the state or any individual for the true accounting of all payments of any and all of said funds.

Loans by Counties — How and to Whom Made — Rate and Payment of Interest — Duties of County Commissioners.

Section 4. Each county shall loan or invest and keep invested all funds so received from the State Board of Land Commissioners, as aforesaid, in first mortgages, upon good improved farm lands within their limits respectively. The amount of each loan shall not exceed two-fifths, ($\frac{2}{5}$) of the actual cash value of the lands covered by the mortgage given to secure the same, and such value shall be determined by the Board of County Commissioners of the county in which the land is situated, and for performing these services said county commissioners shall be paid by the county their actual and necessary traveling expenses, if any, and no other compensation whatsoever, and in no case shall more than five thousand dollars (\$5,000) be loaned to any one person, firm or corporation. All of said loans shall be made in the name of the state, as mortgagee, and all said first mortgages on farm property shall run for a period of time not to exceed ten (10) years, and the funds so invested shall bear interest at the rate of six per cent per annum, payable annually to the county treasurer of the county in which such lands lie. For the first one year payments shall consist only of interest, paid annually, and commencing with the second year, the interest shall be paid annually, as above stated, and the borrower shall have his option of paying, in addition to the interest, ten per cent or any multiple thereof of the principle of any interest-bearing date.

(a) Any such mortgage may be paid in full and satisfied at any time after one year from the date when made, on payment of the whole amount due thereon.

(b) In no case shall a first mortgage loan be made on land of which the appraised value is less than \$10 per acre, and said loans, as provided herein, shall only be made to persons who are actual residents of the county where the lands upon which the mortgage is given are situated.

Forms — How Prepared — By Whom — Contents.

Section 5. It shall be the duty of the State Board of Land Commissioners and the Attorney General of the state, to prepare a form of application and a form of mortgage for use in loaning said funds, such forms to be furnished free of cost by the several counties, to be used exclusively by them in the transaction of all business pertaining to school, educational, charitable and penal institution funds; provided, that said form of mortgage shall contain a provision that default in the payment of interest thereon at any time for a period of thirty days after the same shall become due, shall cause the whole principal and interest on said mortgage to become at once due and payable, and said mortgage may be foreclosed in the manner provided by law.

County Commissioners to Publish Notice — Abstracts, Costs — Duties of County Officers — No Compensation — Application.

Section 6. It shall be the duty of the county commissioners to cause from time to time, such notices to be given by publication in the newspapers of the county, if any be published therein, as will fully advise the people of the county whenever any moneys of such funds are in the county treasurer's hands for investment, as in this law provided.

(a) The county attorney shall examine the abstract of title of such lands as shall be offered as security for such loans and approve or reject the same and from his decision an appeal may be taken to a judge of the

district in which the county is situated and it is made the duty of the district judge to pass on the title and, within ten days, report his findings in writing to the county auditor or county clerk and recorder of said county. No loan of such funds shall at any time be made to any county officer, while in office, nor to any relative or business associate of any county officer, while said officer is in office.

(b) Abstracts of title shall be furnished by the borrower at his expense and this, together with the cost of recording the mortgage, shall be the only charge to be paid by the borrower.

(c) Neither the county attorney, county auditor, county treasurer nor Board of County Commissioners shall receive any compensation for the duties they may perform, under the provisions of this law.

(d) Application for loans shall state amount desired and shall give the description and character of land, the source of title, all improvements, by whom occupied, crops growing and quantities produced the preceding year, location as to railroads, wagon roads, towns, cities, schools, churches and such other information as may be required by the county commissioners to correctly appraise the same; such application to be filled and signed by the borrower and verified by his oath as to all its contents and by him filed with the clerk and recorder of the county wherein the land is situated.

Penalty for Failure to Act.

Section 7. Any county clerk, county auditor, county attorney or county commissioner or county treasurer failing, refusing or neglecting to perform any of the duties which are required of him by this law, at the time required, shall be liable to a fine of not less than fifty dollars or more than \$250, to be recovered in a civil action in the district court by any citizen of the county against him and his bondsmen, and shall, in addition, be liable for all damages resulting because of such refusal or neglect.

Money Returned by Counties.

Section 8. Whenever any moneys of the permanent school or other educational or state institution funds shall have been sent to and received by any county, and no application for loan of the same, as provided in this article, shall have been made, after notice, as hereinbefore provided shall have been published for four (4) successive weeks after the first day of January or July when such money was received, the county auditor shall certify such fact to the State Board of Land Commissioners, with a statement that such money cannot be loaned, it shall be the duty of the State Board of Land Commissioners to order the said funds returned to the State Treasurer forthwith, with interest thereon, as herein provided for a period of sixty (60) days, and when so returned to the State Treasurer, such funds shall be redistributed by the State Board of Land Commissioners, or invested in other securities as provided by law.

Default—Foreclosures—Lands Bid in by County.

Section 9. In case of default in the conditions of any mortgage taken by any county pursuant to the provisions of this law, by reason of which the right to foreclose the same shall accrue to the state the county treasurer shall notify the county attorney of such default, and the county attorney shall, in the name of, and in behalf of the state, foreclose such mortgage by action in the manner provided by law for the foreclosure of mortgages upon real property. If no other person shall bid the full amount due upon said

mortgage upon the foreclosure sale of the same, with the cost, and expenses of the foreclosure and sale, the county attorney or county auditor shall bid in the land in the name of the county for the amount due and all costs and expenses incurred, and such county shall at once pay to the State Board of Land Commissioners such full amount due and interest out of the general fund of the county, and, if the same is not redeemed, as provided by law, the sheriff's deed shall be made to the county and the county shall thereby become the owner of said land.

Mortgages—How Satisfied.

Section 10. Upon the full payment of any school or institution fund mortgage, it shall be the duty of the county treasurer of the county in which such mortgage was recorded to cancel the notes and mortgage by stamping them as paid, and he shall deliver to the person paying the same a certificate of the payment thereof, which certificate shall be presented to the auditor of said county and filed by him in his office, whose duty shall then be to execute in behalf of the county a full release and satisfaction thereof.

When No County Auditor.

Section 11. In counties having no county auditor, it shall be the duty of the county clerk and recorder to perform all of the duties herein designated to be performed by the county auditor and with the same force and effect.

Trust Funds.

Section 12. All moneys which may, from time to time, be designated for investment in farm mortgages and shall, for such purpose be divided among the organized counties of the state, pursuant to this law, shall be held and managed as trust funds, and the several counties shall be and remain responsible and accountable for the principal and interest of all such moneys received by them, from the date of receipt until return, and in case of the loss of any money so apportioned to any county, such county shall repay the same out of its common revenue.

Accounting.

Section 13. Each county shall, semi-annually, on the first day of January and July, render an account of the condition of the funds so intrusted to it, to the State Board of Land Commissioners, and at the same time pay into the state treasury the interest due on all such funds.

Repeal.

Section 14. All acts and parts of acts in any way in conflict with any of the provisions of this law, are hereby repealed.

RETIREMENT OF TEACHERS AND FUND THEREFOR.

Chapter 95, Laws 1915, page 152.

"An act creating certain funds in the state treasury to provide for retirement of public school teachers; providing for the creation of these funds by contributions from teachers, investment of funds, gifts to funds, and appropriations; providing for the custody and management of these funds; providing for the collection, condition of investment and condition of distribution of the funds; providing for the creation of boards to have charge of the funds, and prescribing the duties and powers of such boards; providing for place of meeting of such board; providing for help and expenditures for such board in meeting and carrying out the provisions of this act; providing conditions under which teachers may receive distribution of these funds, including the amount of time and term of payment."

Be it enacted by the Legislative Assembly of the State of Montana:

Establishment of Funds for Retirement of Teachers.

Section 1. There are hereby established two funds in the state treasury to be known, respectively, as the Public School Teachers' Retirement Salary Fund and the Public School Teachers' Permanent Fund. The Public School Teachers' Permanent Fund shall be made up of all moneys received from the following sources or derived in the following manner:

- (1) All contributions made by teachers as hereinafter provided;
- (2) The income and interest derived from the investment of the moneys contained in such fund;
- (3) All donations, legacies, gifts and bequests which shall be made to such fund, and all moneys which shall be obtained or contributed for the same purposes from other sources;
- (4) Appropriations made by the state legislature from time to time to carry into effect the purposes of this act.

Moneys Constituting Fund.

Section 2. The Public School Teachers' Retirement Salary Fund shall be made up of such moneys as shall be transferred from time to time, under authority of this act, from the Public School Teachers' Permanent Fund.

Duty of State Treasurer in Transferring Funds.

Section 3. It shall be the duty of the State Treasurer when notified by the Public School Teachers' Retirement Salary Fund Board, or by the State Superintendent of Public Instruction, under authority of this act, to make such transfers of such amounts from the Public School Teachers' Permanent Fund to the Public School Teachers' Retirement Salary Fund, as will be sufficient to meet the claims which may be legally drawn against said Public School Teachers' Retirement Salary Fund.

Monthly Contributions from Salaries of Teachers.

Section 4. There shall be deducted from the salary of every teacher, subject to the provisions of this act, one dollar from the compensation paid to such teacher for every month for which such teacher receives compensation, and every official whose duty it is to pay such teacher's salary shall make said deduction at the time of payment, and shall at the end of each

quarter draw a warrant in favor of the State Treasurer for the amounts deducted. The amounts thus deducted shall be deposited in the state treasury to the credit of the Public School Teachers' Permanent Fund, and shall constitute a part thereof.

Teachers Eligible to Benefits.

Section 5. No person shall be eligible to receive the benefits of this act who shall not have paid into said Public School Teachers' Permanent Fund an amount equal to twelve dollars for each year of service, up to and including twenty-five years; provided, however, that the difference between the amount actually paid by such teacher of twenty-five years' service and three hundred dollars may be paid into said fund by such teacher at the time of retirement, with the same effect as if the full sum of three hundred dollars had been paid at the rate of twelve dollars per year before retirement; or the sum of twenty dollars per month be withheld from such teacher's retirement salary until the amount so withheld shall equal the difference between the said sum of three hundred dollars and the amount theretofore paid into said fund by such teacher.

Who Constitute Retirement Fund Board.

Section 6. The Superintendent of Public Instruction, the treasurer and the Attorney General of the state of Montana, shall constitute the Public School Teachers' Retirement Salary Fund Board.

Powers and Duties of Board.

Section 7. The Public School Teachers' Retirement Salary Fund Board, subject to the provisions of this act, shall have power and it shall be its duty:

(1) To approve and allow retirement salaries to public school teachers and certain school officers entitled to the same under the provisions of this act.

(2) Through one of its members designated by it for that purpose, to certify all claims and demands against the Public School Teachers' Permanent Fund and the Public School Teachers' Retirement Salary Fund, including all retirement salary demands to the State Board of Examiners, who shall audit same and direct the State Auditor to draw his warrant therefor upon the State Treasurer, payable out of said fund; provided, that no demand shall be allowed except after resolution duly passed at a meeting of the board by a majority of its members, which adoption shall be attested by the secretary.

(3) To require the boards of education, school trustees and other public authorities and all officers having duties to perform in respect to the contributions by teachers to said permanent fund, to report to the board from time to time as to such matters pertaining to the payment of such contributions as it may deem advisable.

(4) To invest the moneys in the permanent fund in securities, and to collect the income therefrom and interest and dividends thereon; to deposit such securities with the State Treasurer, and to make sale of such securities when in its judgment such sale will be advisable; provided, that none of the moneys in the Public School Teachers' Permanent Fund shall be invested in any securities except such as are legally designated for investment in the public school fund.

All bonds, mortgages and other securities shall be deposited with and remain in the custody of the State Treasurer, who shall collect all interest

due thereon, and all the income therefrom, as the same shall become due and payable. The State Auditor is authorized to draw his warrant upon the Public School Teachers' Permanent Fund in payment of duly audited claims arising out of the investment of the moneys in such fund.

(5) To appoint a secretary from the office force of the State Superintendent of Public Instruction and prescribe the duties of such secretary.

(6) To conduct investigations in all matters relating to the operation of this act, and to subpoena witnesses and compel their attendance to testify before it in respect to such matters.

Meetings of Board—Records—Administration of Oaths.

Section 8. Said Public School Teachers' Retirement Salary Fund Board shall meet at least once every three months and at such quarterly meeting shall make a list of all persons entitled to payment out of the fund established by this act, and enter said list in a book to be kept by the board for that purpose, to be known as the "Public School Teachers' Retirement Salary Fund Record." Said list shall be certified as correct by the chairman and secretary of the board, and shall always be open to public inspection. In the performance of the duties of the board, each member and secretary thereof may administer oaths and affirmations to witnesses and others transacting business with the board.

Place of Meeting—Additional Help—Expenditures.

Section 9. The said Public School Teachers' Retirement Salary Fund Board shall hold its meetings at the office of the State Superintendent of Public Instruction. It shall be entitled to the use of the offices of the said state superintendent, who is empowered to employ such additional help and make such expenditures for stationery, stamps, etc., as may be necessary for the creation, maintenance and enforcement of this act, for which the legislature shall be requested to make such appropriations as may from time to time be deemed necessary.

Rules and Regulations.

Section 10. The board shall make rules and regulations not inconsistent with the provisions of this act, which shall have the force and effect of law. Such rules and regulations shall:

(1) Provide for the conduct and regulation of the meetings of the board and the operation of the business thereof;

(2) Provide for the enforcement and carrying into effect of the provisions of this act;

(3) Establish a system of accounts showing the condition of the Public School Teachers' Permanent Fund and the Public School Teachers' Retirement Salary Fund, and receipts and disbursements for and on account of said funds;

(4) Prescribe the form of warrants, vouchers, receipts, reports and accounts to be used in respect to said funds;

(5) Regulate the duties of boards of education, school trustees and other school authorities, imposed upon them by this act, in respect to the contribution by teachers to the Public School Teachers' Permanent Fund, and the deduction of such contributions from the teachers' salaries.

Additional Rules and Regulations.

Section 11. In addition to the powers hereinabove enumerated said board shall make and enforce all necessary and proper rules and regula-

tions for the method or methods of applying for and obtaining retirement salaries provided for in this act, and for the method or methods of determining the right of each applicant to such retirement salary; provided, however, that in all cases legal proof of all necessary facts shall be required and kept on file.

Duties of County and State Superintendents—Reports and Transfers—Warrants by State Auditor.

Section 12. The County Superintendent shall report to the State Superintendent of Public Instruction, before the fifteenth day of July of each year, the names of all persons claiming and the amount that will be required during the current fiscal year to pay the retirement salaries to be paid in such district or county, and said State Superintendent of Public Instruction shall determine from said reports the entire amount required to pay said retirement salaries during said current fiscal year. He shall report the amount required to make such payments to the Public School Teachers' Retirement Salary Fund Board, and thereupon after verifying or correcting same, said board shall notify the State Treasurer, and by resolution, duly adopted, shall direct him to make transfer of the needed amount from the Public School Teachers' Permanent Fund to the Public School Teachers' Retirement Salary Fund. It shall be the duty of the State Treasurer thereupon to make such transfer. When claims for payment of retirement salaries have been duly audited under the provisions of this act, the State Auditor shall draw his warrant therefor upon the said Public School Teachers' Retirement Salary Fund; provided, that no retirement salary, under the provisions of this act, shall be paid on or before the first day of January, 1919.

Persons Entitled to Retirement—Amount of Salary.

Section 13. Every public, state or county school teacher who shall have served as a legally qualified teacher in public, state or county, day or evening schools or partly as such teacher and partly as state or county or city superintendent or supervising executive or educational administrator for at least twenty-five school years at least fifteen of which shall have been in the schools, as hereinbefore specified, of this state, including the last ten years of actual service unless leave of absence shall have been granted by proper school authorities, shall be entitled to retirement, no time included in such leave of absence to be reckoned as time of service. Upon retirement such teacher shall be entitled to receive during life an annual retirement salary of six hundred (\$600) dollars, payable in installments quarterly by warrants drawn as provided in this act.

Provided, the teachers in the service of the state at the time of the passage of this act, who shall have served in states other than this, shall, at the end of twenty-five years' service, the last ten of which shall be in this state as hereinbefore provided, be entitled to the benefits of this act.

Rights of Teachers Retired for Infirmary.

Section 14. Any legally qualified public state, or county school teacher who shall have served as such or in the capacity of school officer as hereinbefore specified for at least fifteen school years in the public schools or school offices as specified above, of this state, and who shall, by reason of bodily or mental infirmity, have become physically or mentally incapacitated for further school service, shall be entitled to retire, or may, by the

Board of Education, school trustees or other school authorities employing such teacher, be compelled to retire. Upon such retirement, voluntary or involuntary, such teacher shall be entitled to receive, during the period of such disability, an annual retirement salary, which shall bear the same proportion to six hundred (\$600) dollars as is borne by the number of years of said teacher's time of service to twenty-five years.

What Constitutes School Year.

Section 15. In counting the actual time of service for the purpose of this act, the Public School Teachers' Retirement Salary Fund Board shall determine what constitutes a school year.

Law to Bind Teachers Now Employed.

Section 16. This act shall be binding upon all teachers employed in the public, state or county schools of this state at the time of the approval of this act, as shall on or before January 1, 1916, sign and deliver to the Superintendent of Public Instruction, or to the County Superintendent, a notification that said teachers agree to be bound by and avail themselves of the benefits of this act.

Act to Bind Future Teachers.

Section 17. This act shall be binding upon all teachers elected or appointed to teach in the public schools of this state after the approval of this act, who, not being in the service of the public schools at the time of the approval of this act, were not competent to sign or deliver the notification specified in the preceding section.

Re-employment of Retired Teacher.

Section 18. If any teacher retired under the provisions of this act, shall be re-employed in the public schools of this or of any other state, such teacher's retirement salary shall not be paid for or during such period of employment; and if any teacher having qualified under section 14 of this act, returns to service in the public schools of the state and thereafter qualifies under this act, there shall be deducted from the retirement salary payable to such teacher under the provisions hereof the amount of retirement salary theretofore actually received by such teacher under the provisions hereof, such amounts to be so deducted in equal quarterly installments until the whole amount so received shall have been deducted; provided, however, that the amount of such deductions to be made quarterly shall not exceed thirty-five dollars.

Limit on Retirement Salaries.

Section 19. No one shall be permitted to draw from the state, directly or indirectly, more than one retirement salary. Nothing in this act shall be so construed, however, as to prevent local communities or bodies of teachers from supplementing the retirement salary received from the state.

Effect of Unconstitutional Provisions.

Section 20. Should the courts declare any section of this act unconstitutional or unauthorized by law or in conflict with any other provision of this act, then such decision shall affect only the section or provision so declared to be unconstitutional or void, and shall not affect any other section or part of this act.

Repeal of Conflicting Laws.

Section 21. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Section 22. This act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1915.

REGULATION OF ENGINES AND MACHINERY.

Chapter 125, Laws 1913, page 473.

"An act regulating traction engines or machinery propelled or operated by gas, oil or any product of oil; prescribing the method of estimating the power or capacity thereof; requiring the same to be marked or labeled; forbidding false representation as to the capacity of power; requiring inspection by boiler inspector when requested, fixing the fees thereof; and prescribing penalties."

Be it enacted by the Legislative Assembly of the State of Montana:

Computation of Capacity of Traction Engines.

Section 1. The capacity or initial power of all traction engines or machinery propelled or operated by gas, oil or any product of oil, when sold or offered for sale within this state, must be computed and determined by the draw-bar horse-power; that is, the initial pulling power of such engines or machinery, and not otherwise; and such power or capacity shall be plainly engraved in figures with the letters H. P. on a metallic templet or place, which templet or place shall, before such engine or machine is sold or offered for sale be securely fastened thereto, in such manner and place and of sufficient size as to be easily seen and read. And all new engines or machinery named herein must be engraved or branded with the shop number, which shall be in some place easily observed.

Examination by State Boiler Inspector.

Section 2. Any owner or lessee of any of the engines or machinery named in section 1 of this act, shall have the right to call upon the state boiler inspector to inspect and determine the power and capacity of such engine or machinery, and it is the duty of the inspector to make such inspection when so requested. The fee for such inspection shall be five dollars when such engine or machinery is located within any incorporated city or town and ten dollars when not located within any incorporated city or town, which fees shall be demanded and paid in advance, provided that the inspector may select and determine the time of such inspection. When such inspection is completed the inspector shall deliver to the party a certificate, showing the date of inspection, the description of the engine or machinery inspected, which may be by shop number and make, and the draw-bar horse-power thereof, provided that the provisions of this act shall not apply to automobile nor to railroad locomotives.

Penalty for Noncompliance With Law.

Section 3. Any person, firm or corporation or copartnership or agent who shall sell or offer for sale or shall authorize or induce any other person to sell or offer for sale any of the engines or machinery named in section 1 of this act, without having the same marked or labeled as pro-

vided in section 1 of this act, or who shall misrepresent the capacity or initial horse-power or draw-bar horse-power of such engines or machinery shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than five dollars, nor more than five hundred dollars, or imprisoned in the county jail not more than six months or by both such fine and imprisonment.

Section 4. All acts and parts of acts in conflict with this act are hereby repealed.

Section 5. This act shall take effect and be in full force and effect from and after its passage and approval.

Approved March 18, 1913.

HOISTING ENGINES—LICENSE TO OPERATE.

Chapter 104, Laws 1915, page 229.

“An act requiring all persons who operate electric hoisting engines, and air-hoisting engines, when used in lowering or hoisting men, except in elevators in buildings, of over twenty-five (25) horse-power, to obtain a license, and prescribing qualifications, fees, and regulations therefor, and providing penalties for the violation of any of the provisions of this act.”

Be it enacted by the Legislative Assembly of the State of Montana:

Operators of Hoisting Engines must Procure License.

Section 1. It shall be unlawful for any person to operate any electric-hoisting engine, or any air-hoisting engine over twenty-five (25) horse-power, when either are used in lowering or hoisting men, except in operating elevators in buildings, without first obtaining a license therefor from the state boiler inspector, or one of his assistants, as herein provided.

Except that in emergencies the provisions of section 1657, of the Revised Codes, relating to employment of unlicensed engineers shall apply to the operation of the engines and machinery named herein.

Application and Fee for License—Life of License and Renewals.

Section 2. Application for such licenses shall be made to the state boiler inspector in the manner, and the same fee shall be charged therefor and for such license, as now required by law for obtaining a license to operate steam engines and steam boilers, and such license shall be given for a period of one year from the date of issuance thereof, and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines or steam boilers, provided, that the state boiler inspector shall have the right to revoke any license issued under the provisions of this act for any of the reasons for which he could revoke a license to operate steam engines and steam boilers.

Scope of License—Who Need not Obtain.

Section 3. A license granted under the provisions of this act shall entitle the holder thereof to operate any of the machinery named in section 1 of this act, and the license shall specify on its face such machinery, but no license issued hereunder shall authorize or qualify the person to whom issued to operate a steam boiler or steam engine. Any person holding a license as a first-class engineer, authorizing him to operate steam engines

and steam boilers shall be deemed qualified to operate any of the engines and machinery named in section 1 of this act without obtaining any license under the provisions thereof.

First and Second Class Licenses—Qualifications of Applicant.

Section 4. Licenses issued under this act shall be divided into two classes, namely, first class and second class. No person must be granted a first-class license who has not taken and subscribed an oath that he has had at least three years' experience in the operation of at least one of the engines named in section 1 of this act, and whose knowledge of the construction and operation is such as to justify the belief that he is competent to take charge of and operate such machinery. No person must be granted a second-class license who has not taken and subscribed an oath that he has had at least two years' experience in the operation of at least one of the engines named in section 1 of this act and whose knowledge of the construction and operation is such as to justify the belief that he is competent to take charge of and operate such machinery.

Machinery Which Licensee Deemed Qualified to Operate.

Section 5. Any person to whom is granted a first-class license under the provisions of this act shall be deemed qualified to operate any of the machinery or engines named in section 1 of this act, without regard to the horse-power thereof. Any person to whom is granted a second-class license under the provisions of this act shall not be permitted to operate any of the machinery named in section 1 thereof, of a greater capacity than one hundred (100) horse-power.

Renewal of Application by Rejected Candidate.

Section 6. Any person who has regularly applied for a license under the provisions of this act and has been rejected, may renew his application for such license within the time and in the manner prescribed in section 1653, and section 1654, of the Revised Codes of Montana.

Penalty for Operating Machinery Without License.

Section 7. Every person who operates any of the engines and machinery named in section 1 of this act for which a license is required, without first obtaining a license as required by the provisions of this act, and every owner, employer or manager of any such engines or machinery who knowingly permits any unlicensed person to operate the same, or any person who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred (\$500) dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

STATE FIRE MARSHAL.

Chapter 148, Laws 1911, page 497.

An act to create and establish the office of State Fire Marshal, to provide for his appointment, fixing his salary and defining his duties; and defining the duties and powers of certain other officials in relation thereto.

Be it enacted by the Legislative Assembly of the State of Montana:

Creation of Office of State Fire Marshal.

Section 1. There is hereby created and established the office of State Fire Marshal, which shall be a department of, and under the supervision and control of the State Auditor and Commissioner of Insurance, ex officio.

Appointment and Term of Office.

Section 2. The State Auditor and Commissioner of Insurance, ex officio, is hereby authorized and empowered to appoint immediately, after the approval of this act, a suitable person, a citizen of this state, who shall be designated as State Fire Marshal, and whose term of office shall be for four (4) years; except, that the first officer appointed under this act shall hold office until January 1, 1913, or until his successor is appointed and qualified, provided, that such officer is subject at all times to removal by the appointing power.

Salary of Fire Marshal.

Section 3. The salary of the State Fire Marshal shall be twenty-one hundred (\$2100) dollars per annum, payable monthly from the special fund as hereinafter provided.

Marshal not to Engage in Other Business.

Section 4. The State Fire Marshal shall not engage in any other business. He shall at all times be in the office of the State Fire Marshal, ready for the performance of the duties required of him by law.

Special Deputy Fire Marshal.

Section 5. In an emergency, or during the absence or disability of the State Fire Marshal, the State Auditor and Commissioner of Insurance may appoint a Special Deputy Fire Marshal, who shall perform the duties of the office or any duty which may be assigned to him, such appointment to be temporary and to cease when the necessity therefor has been relieved. Said special deputy shall be allowed and paid at the rate of five (\$5) dollars per day for each day's service performed in the interest of the state under said appointment, during the period for which said appointment was authorized. His claim for per diem for such service and for necessary traveling expenses incurred in the performance of said duties, properly attested and sworn to, shall be filed with the Commissioner of Insurance or State Fire Marshal, who shall certify to the correctness of the same, and refer said claim so certified, to the State Board of Examiners, and upon their approval, as required by law, said claim shall be paid in the usual manner; provided that the warrant issued in payment of said claim shall be charged against the amount appropriated for the expenses of the State Fire Marshal's Office; and provided further, that the State Auditor and Commissioner of Insurance may also appoint Special Deputy Fire Marshals without remuneration. [Amendment approved March 14, 1913; Laws 1913, c. 95, p. 427.]

Investigation of Fires.

Section 6. The State Fire Marshal, the chief of the fire department of each city or village in which a fire department is established, the mayor of each incorporated village in which no fire department exists, and the justice of the peace of each organized township without the limits of a village or city, shall investigate the cause, origin and circumstances of each fire occurring in such city, village or township by which such property has been destroyed or damaged, and shall make an investigation to determine whether the fire was the result of carelessness or design. The investigation shall be commenced within two days, not including Sunday, if the fire occurred on that day, and the State Fire Marshal may superintend and direct the investigation if he deems it necessary.

Duty in Carrying on Investigation.

Section 7. The officer making an investigation of a fire occurring in a city, village or township, shall forthwith notify the State Fire Marshal, and within one week of the occurrence of the fire shall furnish him a written statement of all facts relating to its cause and origin, and such other information as is required by forms provided by the State Fire Marshal.

Punishment for Violation of Act.

Section 8. An officer named in the last two preceding sections who neglects to comply with any requirements of this chapter, shall be fined not less than twenty-five dollars, nor more than two hundred dollars.

Further Investigation by Marshal.

Section 9. If, in his opinion, further investigation is necessary, the State Fire Marshal, or a Deputy State Fire Marshal, shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have means of knowledge in relation to the matter concerning which an examination is required by law to be and cause such testimony to be reduced to writing.

Arrests by Marshal.

Section 10. If the State Fire Marshal, or a deputy is of the opinion that there is evidence sufficient to charge a person with arson or a similar crime, he shall arrest him or cause him to be arrested and charged with such offense. He shall furnish the prosecuting attorney such evidence, with the names of witnesses, and a copy of material testimony taken in the case.

Attendance of Witness and Production of Evidence.

Section 11. The State Fire Marshal or a Deputy State Fire Marshal may summon and compel the attendance of witnesses before him to testify in relation to any matter which by law is a subject of inquiry and investigation, and require the production of any book, paper or document he deems pertinent.

False Swearing or Contemptuous Conduct of Witnesses.

Section 12. The State Fire Marshal, or a Deputy State Fire Marshal, shall have authority to administer an oath to any person appearing as a witness before him. False swearing in a matter or proceeding shall be perjury and punished as such. A witness who refuses to be sworn or refuses to testify, or disobeys a lawful order of the State Fire Marshal, or a Deputy State Fire Marshal, or fails, or refuses, to produce a book, paper

or document concerning a matter under examination, or is guilty of contemptuous conduct after being summoned by such officer to appear before him to give testimony in relation to a matter or subject under investigation, may be summarily punished by such officer as for contempt, by a fine not exceeding one hundred dollars, or be committed to the county jail until such person is willing to comply with the order.

Investigation may be Private.

Section 13. Investigation by or under the direction of the State Fire Marshal may in his discretion be private. He may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not be allowed to communicate with each other until they have been examined.

Examination of Premises Where Fire Occurred.

Section 14. In the performance of the duties imposed by the provisions of this chapter, the State Fire Marshal and each of his subordinates, at all times of day or night, may enter upon and examine any building or premises where a fire has occurred, and other buildings and premises adjoining or near thereto.

Entering of Buildings for Purpose of Examination.

Section 15. The State Fire Marshal, his deputies and subordinates, the chief of the fire department of each city or village where a fire department is established, or the mayor of a city or village where no fire department exists, or the justice of the peace of a township in territory without the limits of a city or village, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of examination.

Removal of Dangerous Structure or Combustible Material.

Section 16. If the State Fire Marshal, a Deputy State Fire Marshal, or any officer mentioned in the preceding section, upon an examination or inspection finds a building or other structure, which for want of proper repair, by reason of age and dilapidated condition, defective or poorly installed electrical wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or for any other cause or reason is especially liable to fire and which building or structure is so situated as to endanger other buildings or property, such officer shall order such building or buildings to be repaired, torn down, demolished, materials removed and all dangerous conditions remedied. If such officer finds in a building, or upon any premises any combustible or explosive material, rubbish, rags, waste, oils, gasoline or inflammable conditions of any kind, dangerous to the safety of such buildings or premises, buildings or property, he shall order such materials removed or conditions remedied. Such order shall be made against and served personally or by registered letter upon the owner, lessee, agent, or occupant of such building or premises, and thereupon such order shall be complied with by the owner, lessee, agent or occupant and within the time fixed in said order. [Amendment approved March 14, 1913; Laws 1913, c. 95, p. 427.]

Appeal to State Fire Marshal.

Section 17. If the owner or occupant deems himself aggrieved by an order of an officer under the preceding section he may appeal to the State

Fire Marshal within twenty-four hours and the cause of the complaint shall at once be investigated by direction of the State Fire Marshal. Unless such order is revoked by the State Fire Marshal, it shall remain in force and forthwith be complied with by such owner or occupant.

Failure of Owner of Building to Comply With Order.

Section 18. An owner or occupant of buildings or premises who fails to comply with the orders of the authorities named in the three preceding sections shall be fined not less than ten dollars nor more than fifty dollars for each day's neglect.

Records of Fire Marshal.

Section 19. The State Fire Marshal shall keep in his office a record of all fires occurring in the state, the origin of such fires and all facts, statistics and circumstances relating thereto, which have been determined by investigations under the provisions of this chapter. Except the testimony given upon an investigation, such record shall be open at all times to public inspection.

Compensation of Officers.

Section 20. Chiefs of fire departments and mayors of incorporated villages who do not receive compensation for their services, and justices of the peace of organized townships, who are required by the provisions of this chapter to report fires to the State Fire Marshal, shall receive fifty cents for each fire reported to his satisfaction, and fifteen cents per mile for each mile traveled to the place of the fire. At the close of each appropriation year such allowance shall be paid in the same manner as other claims arising in the State Fire Marshal's Department, and as heretofore provided for in this act.

Itemized Statement of Marshal's Expenses.

Section 21. The State Fire Marshal shall keep on file in his office an itemized statement of all expenses incurred by the department. He shall approve all vouchers issued therefor before they are submitted to the State Board of Examiners for payment, and thereupon such vouchers shall be allowed and paid as other claims against the State.

Annual Reports to Commissioner of Insurance.

Section 22. The State Fire Marshal shall make an annual report to the Commissioner of Insurance, containing a detailed statement of his official action and the transactions of his department. The Commissioner of Insurance shall, in turn, submit said report to the Governor of the state, with such recommendation and comments thereon as he may deem necessary.

Oath and Bond of Marshal and Deputy.

Section 23. The State Fire Marshal shall be required to give a surety bond, furnished by a company authorized to transact surety business in this state, in the sum of five thousand dollars, for the faithful performance of his duties, and shall subscribe and file therewith the oath of office required of all public officers; and, provided further, that any special Deputy Fire Marshal appointed under the provisions of this act, shall also file the oath of office required of all public officers.

Tax Levy—Expenditure of Funds.

Section 24. For the purpose of maintaining the department of the State Fire Marshal and the payment of the expenses incident thereto, each fire insurance company doing business in this state shall pay to the State Auditor and Commissioner of Insurance, ex officio, during the month of February or March in each year, in addition to the license fees required by law to be paid by it, provided in section 4017, Revised Codes of 1907, a tax of one-fourth ($\frac{1}{4}$) of one (1) per cent on the gross premium receipts of such companies, less cancellations and return premiums, on all business transacted by it in the state of Montana during the calendar year next preceding, as shown by its annual statement under oath to the insurance department. The State Auditor and Commissioner of Insurance, ex officio, shall pay the money so received into the State Treasury to the credit of a special fund for the maintenance of the office of the State Fire Marshal, to be known as the "State Fire Marshal Fund." If any portion of such special fund remains unexpended at the end of the year, for which it was required to be paid and the State Fire Marshal so certifies, it shall be transferred to the general fund of the state; provided that such salaries, compensation of special deputies or clerks, and all other expenses of the department of the State Fire Marshal, necessary in the performance of the duties imposed on him by law, shall not exceed in any year the amount paid into the state treasury for that year by fire insurance companies, as provided herein.

Powers of Commissioner of Insurance.

Section 25. The powers and authority granted by this act to the State Fire Marshal, are also vested in the Commissioner of Insurance.

Section 26. This act shall be in full force and effect from and after March 15, 1911.

Section 27. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 17, 1911.

ANTI-HOG CHOLERA SERUM.

Chapter 56, Laws 1915, page 84.

"An act to appropriate money for the purchase of anti-hog cholera serum, to be purchased by the Experimental Station of Montana Agricultural College for the purpose of distribution to any person so desiring to purchase the same in the state of Montana for the protection of the hog industry in the state of Montana, and directing how same shall be handled."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That two thousand dollars is hereby appropriated out the general fund not otherwise appropriated for the purpose of buying anti-hog cholera serum, this money to be known as the Anti-Hog Cholera Serum Fund and to be used by the Experimental Station of Montana Agricultural College for the purpose of purchasing anti-hog cholera serum to be sold to hog-growers or anyone desiring to use anti-hog cholera serum in the state of Montana, upon request at a price not to exceed twenty-five per cent more than cost to state to be determined by the director of

Experimental Station. All money so collected to be turned into the Anti-Hog Cholera Serum Fund and to be used for the purchase of additional anti-hog cholera serum or virus. The experimental station must purchase the most efficient and potent serum for the least possible cost and all serum or virus so purchased must be manufactured under a license issued by the United States Bureau of Animal Industry and must conform with all rules and regulations prescribed by the United States Bureau of Animal Industry and the Montana Livestock Sanitary Board.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This act to be in force and effect from and after its passage and approval.

Approved March 3, 1915.

INVESTIGATION OF SPOTTED FEVER.

Chapter 64, Laws 1911, page 127.

An act providing for the investigation of the nature, source and vehicle and the cure and prevention of Rocky Mountain spotted fever and appropriating money therefor.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That the sum of five thousand (\$5,000) dollars, or so much thereof as may be necessary for the year 1911, and a like sum or so much thereof, as may be necessary for the year 1912, be, and the same is, hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to conduct a scientific investigation into the nature, source and vehicle of the disease known as Rocky Mountain spotted fever and to conduct investigation as to the cure and prevention thereof.

Section 2. That upon the passage and approval of this act the State Board of Health shall appoint some fit and proper person to conduct such investigation as in section 1 of this act provided.

Section 3. The salary of such person appointed as in section 2 of this act provided, shall be fixed by the State Board of Examiners and such person shall monthly make an account of his expenses verified by affidavit to the State Board of Examiners, who shall in the manner provided by law examine, and if found correct, allow the same.

Section 4. The state auditor is hereby authorized to draw his warrant in favor of such person for the amount so allowed by the State Board of Examiners and the State Treasurer is directed to pay the same.

Approved March 2, 1911.

HOSPITALS NOT TO DISCRIMINATE.

Chapter 114, Laws 1913, page 459.

"An act to compel every person, persons, corporation or association conducting a hospital that is, or hospitals that are, exempt from taxation to admit and care for patients of any regularly licensed physician in the state of Montana upon the same terms and conditions as patients of any other regularly licensed physician, and prescribing the penalty for the violation thereof."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Every person, persons, corporation or association conducting a hospital or hospitals not held for private or corporate profit or a

hospital or hospitals that are institutions of purely public charity, that exempt themselves or are exempted from any state, county or municipal tax by reason thereof, shall not in any manner discriminate between the patients of any regularly licensed physician by reason of the fact that said physician is not a member of the medical staff of said hospital, or for any other reason, and such hospitals are hereby compelled to admit and care for the patients of any regularly licensed physician or physicians under the same terms and conditions as may be promulgated by the management of said hospital as the patients of any other regularly licensed physician.

Section 2. Every person, persons, corporation or association who with the intent to injure any patient or to injure the practice of any physician or surgeon is found guilty of violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars and not exceeding one thousand dollars, and shall forthwith forfeit its right of exemption from taxation.

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

Section 4. This act shall take effect from and after its passage and approval.

Approved March 17, 1913.

TUBERCULOSIS SANITARIUM.

Chapter 125, Laws 1911, page 340.

"An act to establish a state hospital to be known as the 'Montana State Tuberculosis Sanitarium' in some suitable location in the state of Montana, for the treatment of tuberculosis and also what is commonly known as miner's consumption, prescribing rules and regulations for the same, and making appropriation therefor."

Be it enacted by the Legislative Assembly of the State of Montana:

Establishment and Objects.

Section 1. There is hereby established a state hospital to be known as the "Montana State Tuberculosis Sanitarium" for the treatment of tuberculosis and also what is commonly called "miner's consumption," the location thereof to be determined as hereinafter specified.

Executive Board.

Section 2. The Governor, by and with the advice and consent of the State Board of Examiners, shall appoint two citizens of the state of Montana, one of whom shall be a physician, who, together with the president of such institution, shall constitute the executive board of the Montana State Tuberculosis Sanitarium. The president of such institution shall be, ex officio, a member of said board and shall be the chairman thereof. The ex-officio member of said board shall hold his office during his continuance as president of such institution, and the two members appointed by the Governor shall hold office for the term of four years unless sooner removed by the Governor; provided that the members of the executive board first appointed, one shall be appointed for the term of two years and one for a term of four years, and appointments to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Such members shall qualify by taking

and filing their oath of office with the State Board of Examiners. The members of said executive board, except the chairman, shall receive such compensation as shall be fixed by the State Board of Examiners not exceeding the sum of five dollars for each day actually spent in the discharge of their official duties, and not exceeding the sum of one hundred twenty-five dollars in any one year for each member, and such members shall also be reimbursed from the amount appropriated by the legislature for the maintenance and support of such institution all expenses necessarily incurred by them in the discharge of their official duties as members of said board.

Any member of said board may at any time be removed from office by the Governor for any cause he may deem sufficient, after an opportunity to be heard in his defense, and others may be appointed in their places as herein provided. Two members of said board shall constitute a quorum.

Powers and Duties of Executive Board.

Section 3. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the State Board of Examiners, subject always to the supervision and control of said State Board of Examiners.

Subject to the approval of the State Board of Examiners, they shall establish such by-laws, rules and regulations as they may deem necessary or expedient for regulating the appointment and duties of officers and employees of the sanitarium and for the internal government, discipline and management of the same.

To maintain an effective inspection of the affairs and management of the institution.

To keep in a book provided for that purpose an exact and full record of the doings of the board, which shall be open at all times to the inspection of its members, the Governor of the state, the State Board of Examiners, the State Board of Health or any member thereof, or any person appointed by the Governor or the legislative assembly.

The executive board shall meet in regular session at least once in each quarter, and monthly or oftener if the business of such institution requires it, and shall have general charge of the administration of said institution.

On or before the first Monday in June of each year, said board shall make a detailed statement and report of all its transactions and of the condition of the institution, including the number of physicians and other employees, with the salary or wages paid to each, and a detailed statement of all expenses and disbursements of such institution, which report shall contain such other information or recommendations as may be required by the State Board of Examiners, and the State Board of Examiners shall have authority to call for a report and statement from such executive board at any time such board may deem it advisable, which shall be immediately furnished upon request. All such reports by such executive board shall be made in duplicate, one copy shall be retained by such executive board and the other copy shall be filed with the State Board of Examiners.

Site of Sanitarium.

Section 4. The State Board of Examiners is hereby empowered to select a site for the establishment of said state sanitarium at such place in the state of Montana as it may deem advisable.

Buildings and Improvements.

Section 5. The State Board of Examiners, as soon as a site for such sanitarium is selected, shall proceed with the construction and equipment of all necessary and suitable buildings, including heating, lighting, plumbing, laundry fixtures, and a water supply thereof, and the construction of roads thereto, and to provide and adopt such plans as may be necessary and approved by the State Board of Health for the construction of such buildings, at an expense not exceeding fifty thousand dollars, and for this purpose said State Board of Examiners shall make and award contracts for the erection and construction of said buildings and the equipment thereof, and employ a competent person to superintend the construction thereof at a salary not to exceed three per cent of the cost of the buildings, which sum shall be paid out of the appropriation hereby made for the construction of said buildings. The State Board of Examiners shall require the contractor or contractors constructing the buildings and equipment herein provided for to give to the state of Montana a good and sufficient bond for the completion thereof within the time prescribed in the contract and in accordance with the plans and specifications adopted therefor.

President.

Section 6. The Governor, by and with the advice and consent of the State Board of Examiners, shall appoint a president of said sanitarium, who shall be a well-educated physician, legally qualified to practice medicine in Montana, with an experience of at least six years in the actual practice of his profession, including at least a year's actual experience in a general hospital and reasonable experience in the treatment of tuberculosis. The said president may be discharged or suspended at any time by the State Board of Examiners in its discretion.

Duties of President.

Section 7. The president shall: (a) Appoint such employees as are necessary and proper for a due administration of the affairs of such institution, prescribe their duties and offices, and, subject to the approval of the State Board of Examiners fix their compensation within the appropriation fixed therefor.

(b) Oversee and secure the individual treatment and personal care of each and every patient in the sanitarium while resident therein, and keep a proper oversight of all the inhabitants thereof.

(c) Have the general superintendence of the buildings and grounds, with their furnishing and fixtures, and the selection and control of all persons employed in and about the same.

(d) Give from time to time such orders and instructions as he may deem best calculated to induce good conduct, fidelity and economy in any department for the treatment of patients.

(e) Maintain a salutary discipline among all employees, patients and inmates of the sanitarium, and enforce strict compliance with his instructions and obedience to all the rules and regulations of the sanitarium. He shall, under the supervision and control of the executive board, discharge such patients as are sufficiently restored to health.

(f) Cause full and fair accounts and records of the conditions and prospects of the patients to be kept regularly from day to day in books provided for that purpose; and see that such accounts and records shall

be in condition to be fully and properly inspected by the executive board at each regular meeting thereof; and that the principal facts and results, with a report thereon, shall be presented to the executive board at each regular meeting of said board.

(g) Conduct the official correspondence of the sanitarium and keep a record or copy of letters written and files of all letters received.

(h) Prepare and present to the executive board annually, at the first quarterly meeting in each year, a true and perfect inventory of all the personal property and effects belonging to the sanitarium, and account, when required by the board, for the careful keeping and economical use of all furnishings, stores, and other articles furnished for the sanitarium.

Secretary and Treasurer.

Section 8. The executive board shall appoint a secretary of said board, who may also act as treasurer, and who may or may not be a member of said executive board, and such secretary and treasurer shall give bond with good and sufficient sureties for the faithful performance of his duties as such, and for the faithful accounting for and paying over to and for the use of said institution of moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the State Board of Examiners, and when executed shall be approved by the said State Board of Examiners. The treasurer of the executive board shall be the treasurer of the institution.

The duties of the secretary and treasurer shall be such as are usually performed by such officers, or which may be designated by the State Board of Examiners.

Medical Assistants and Examining Physicians.

Section 9. All medical assistants shall be appointed by the executive board. No medical assistant shall be appointed who is not a well educated physician, legally qualified to practice medicine in Montana, and with an experience of at least two years in the actual practice of his profession, including at least one year's actual experience in a general hospital. The executive board shall also appoint in all of the first, second and third class cities of the state, reputable physicians, citizens of the state of Montana, who shall examine all persons applying for admission to said sanitarium for treatment. There shall be not less than one nor more than four such examining physicians appointed in cities of the first class, and not more than two in cities of the second and third class. Said examining physicians shall have been in the regular practice of their profession for at least five years, and shall be skilled in the diagnosis and treatment of diseases. Their fee or compensation, for each patient examined, shall not exceed three dollars.

Free Patients.

Section 10. The executive board of said sanitarium is hereby given power and authority to receive therein patients who have no ability to pay, but no person shall be admitted to the sanitarium who has not been a citizen of this state for at least one year, excepting that a female who has been a resident of the state for at least five months preceding the date of the application, may be so admitted, though not a citizen. Every person desiring free treatment in said sanitarium shall apply to the local authorities of his or her own town, city or county, having charge of the

relief of the poor, who shall thereupon issue a written request to the president of said sanitarium for the admission and treatment of such person. Such request shall state in writing whether the person is able to pay for his or her care and treatment while at the sanitarium, which request and statement shall be kept on file by the president in a book kept for that purpose in the order of their receipt by him. No person shall be admitted as a patient in said institution without certificate of an examining physician, certifying that such applicant is suffering from tuberculosis or what is commonly called miner's consumption, and if upon the reception of a person at such sanitarium it is found by the authorities thereof that he or she is not suffering from tuberculosis or miner's consumption, he or she shall be returned to the place of his or her residence, and the expense of transportation to and from the sanitarium shall be paid by the county of which he or she is a resident. Admissions to said sanitarium shall be made in the order in which the names of applicants shall appear upon the application book to be kept as above provided by the president of said sanitarium, in so far as such applicants are subsequently certified by the said examining physician to be suffering from tuberculosis or miner's consumption. Every person who is declared as herein provided to be unable to pay for his or her care and treatment, shall be transported to and from the sanitarium at the expense of said local authorities, and cared for, treated and maintained therein at the expense of the county or municipality which would otherwise be chargeable with the support of such poor or indigent person; and the expense of transportation, treatment, maintenance and the actual cost of articles of clothing furnished by the sanitarium to such poor and indigent person shall be a county or town charge, as the case may be.

Private Patients.

Section 11. Applicants for admission to this institution who are able to pay for their care and treatment are not required to obtain a written request from the local authorities having charge of the relief of the poor, but shall apply in person to the president who shall enter the name of such applicant in the book to be kept by him for that purpose, as provided in section 10; and when there is room in said sanitarium for the admission of said applicant, without interfering with the preference in the selection of patients, which shall always be given to the indigent, such patient shall be admitted to the sanitarium upon the certificate of one of the examining physicians, which certificate shall be kept on file by the president.

Support of Free Patients.

Section 12. At least once in each month the president of the sanitarium shall furnish the executive board and to the local authorities of each county, city or town, as the case may be, having charge of the relief of the poor, a list of all the free patients in the sanitarium that are credited each respective county, city or town, and who are shown by the statement of such local authorities to be unable to pay for their care, treatment and maintenance, under the provisions of section 10. He shall accompany each such list with a bill of charges for care, treatment and maintenance at a rate not exceeding five (\$5) dollars per week for each such free patient, together with items of expense of transportation, fee of the examining physi-

cian and the actual cost of articles of clothing furnished by the sanitarium to each such free patient. The treasurer of the sanitarium shall thereupon collect from the local authorities of the county, city or town, such sums as may be due therefrom, and pay the same over to the State Treasurer.

Support of Private Patients.

Section 13. The executive board shall have power and authority to fix the charges to be paid by patients who are able to pay for their care and treatment in said sanitarium or who have relatives bound by law to support them, who are able to pay therefor.

State Board of Examiners.

Section 14. The State Board of Examiners of the state of Montana shall have power, and it shall be its duty:

(a) To have the general control and supervision of the sanitarium and to provide, subject to the laws of the state, rules and regulations for the government of its affairs.

(b) To adopt rules and regulations, not inconsistent with the Constitution and laws of this state, for its government, and proper and necessary for the execution of the powers and duties conferred upon it by law.

(c) To fix the compensation of the president and other employees of the institution.

(d) To confer upon the president and executive board of said institution such authority relative to the immediate control and management, other than financial, and the selection of employees as may be deemed expedient and for the best interests of said institution.

(e) To have supervision and control of all expenditures of all moneys appropriated or received for the use of said institution from [any] and all sources, and said State Board of Examiners shall have power to select and to approve plans for buildings, let contracts, approve all bonds for any and all buildings and improvements, and shall audit all claims to be paid from any moneys, but said State Board of Examiners shall have authority to confer upon the executive board of said institution such power and authority in contracting current expenses and in auditing, paying and reporting bills for salaries or other expenses incurred in connection with said institution as may be deemed by said Board of Examiners to be for the best interests of said institution.

Donations, Devises, Grants.

Section 15. All donations, grants, gifts or devises made to said institution shall be made in its legal name, and if made to any officer or board of said institution, the same shall be immediately transferred by such officer or board to said institution.

Appropriation.

Section 16. The sum of twenty thousand (\$20,000) dollars is hereby appropriated for securing a site and for erecting, constructing and equipping the sanitarium and buildings, as herein provided.

The sum of ten thousand (\$10,000) dollars, or so much thereof as may be needed is hereby appropriated from any money in the general fund not otherwise appropriated, for the purpose of paying the salaries and all expenses incidental to maintaining and operating the sanitarium during the two years ending March 1, 1913.

The State Treasurer shall disburse the moneys hereby appropriated, upon the orders of the State Board of Examiners.

Section 17. This act shall take effect from and after its passage and approval.

Approved March 7, 1911.

BONDS FOR TUBERCULOSIS SANITARIUM AND INSANE ASYLUM.

Chapter 105, Laws 1915, page 231.

"An act to authorize the state of Montana to become indebted in the sum of one hundred thousand dollars (\$100,000), for the issuance of bonds in the name of the state for buildings and improvements at the Montana State Tuberculosis Sanitarium, located at Galen, Montana, and the State Insane Asylum, located at Warm Springs, Montana, and prescribing the duties and powers of the State Board of Examiners in regard thereto."

Be it enacted by the Legislative Assembly of the State of Montana:

Authority to Issue Bonds—Amount and Purpose Thereof.

Section 1. The State Board of Examiners of the state of Montana is hereby authorized and directed to issue bonds in the name of the state of Montana, in the amount of one hundred thousand dollars (\$100,000), the bonds or the money derived from said bonds, to be used in payment for such necessary buildings and improvements as the State Board of Examiners may deem necessary for the betterment of the Montana State Tuberculosis Sanitarium, located at Galen, Montana, and the State Insane Asylum located at Warm Springs, Montana. Provided, however, that the proceeds of said bonds shall be set apart as follows: For buildings and improvements at State Insane Asylum, eighty thousand dollars; for buildings and improvements at the Tuberculosis Sanitarium, twenty thousand dollars.

Denominations of Bonds—Interest.

Section 2. The said bonds, issuance of which is hereby provided for, shall be issued in denominations of one thousand dollars (\$1,000) each, and shall bear date July 1, 1915, and become due in five years from the date of issuance, and be redeemable and payable at the option of the state, three years, from their date, or at any interest paying period, and they shall bear interest at the rate of four per cent (4%) per annum, payable semi-annually in the first days of January and July of each year, at the office of the State Treasurer of the state of Montana.

Conditions of Bonds—Redemption Notice.

Section 3. Each bond issued under the provisions of this act shall contain a condition substantially as follows:

"This bond is one of a series of state bonds of the denomination of one thousand dollars (\$1,000), each of like tenor, and dated and numbered from one to one hundred inclusive, and aggregating the sum of one hundred thousand dollars (\$100,000). The right is hereby reserved to redeem this bond at any regular interest paying period, as stated herein, by payment of the principal and interest in full to the date of redemption. Provided that not less than ten days' notice shall be given by the State

Treasurer in writing, or by publication of such intention on the part of the state to make redemption."

The form of notice and method of giving same, shall be in accordance with the directions of the State Board of Examiners.

Tax Assessment—Duty of State Treasurer.

Section 4. There shall be levied annually for the period of five years, or for such time as may be necessary, not to exceed one-twentieth (1/20th) of a mill on the dollar, on all taxable property in this state, which when collected by the county treasurer shall be accounted for and paid over to the state treasurer to be by him held in a separate fund, to be designated as "The State Insane Asylum and Tuberculosis Sanitarium Improvement Bond Fund," and same shall be used exclusively for the payment of interest on such bonds, and for the redemption thereof.

Form and Registry of Bonds—Interest Coupons.

Section 5. The bonds shall be in such form as shall be prescribed by the Attorney General, and approved by the State Board of Examiners, and shall be signed by the members of said board, and issued under the great seal of the state of Montana, and shall be registered in the office of the state treasurer. The bonds shall have interest coupons attached covering the interest due semi-annually, and shall have the lithographic facsimile signature of the members of the State Board of Examiners affixed thereto.

Manner of Sale of Bonds.

Section 6. The bonds herein authorized and provided for shall be disposed of by the State Board of Examiners in such manner as seems for the best interests of the state in carrying out the terms and provisions of this act, and none of the said bonds shall be sold or disposed of for less than par value.

Repealing Clause.

Section 7. All acts and parts of acts in conflict herewith are hereby repealed.

Section 8. This act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1915.

REGULATION FOR NURSES.

Chapter 50, Laws 1913, page 82.

"An act to establish a Board of Examiners for Nurses; providing that the Governor may issue a license or certificate of registration to persons engaged in the profession of nursing the sick, and fixing penalties for any violation of this act."

Be it enacted by the Legislative Assembly of the State of Montana:

Issuance of Licenses by Governor to Nurses.

Section 1. The Governor of the state of Montana shall have the power, and it shall be his duty, to issue a license or certificate of registration to any person practicing the profession of nursing the sick, upon the recommendation of the Board of Examiners for Nurses, said board to be appointed as hereinafter provided for.

Appointment of Board of Examiners for Nurses.

Section 2. The Governor of the state of Montana shall, within ninety days after the passage and approval of this act, designate and appoint five persons who shall constitute the Board of Examiners for Nurses. Said board shall consist of five members, and shall be appointed by the Governor from the membership of the Montana State Association of Graduated Nurses. The first board shall hold office during the following terms:

One member for the period of one year.

Two members for the period of two years.

Two members for the period of three years, and the members and the terms thereof to be designated by the Governor.

Filling of Vacancies in Board.

Section 3. Subsequent to the organization of State Board of Examiners for Nurses, the Governor of the state of Montana shall fill all vacancies and shall perpetuate said board by the appointment of members thereof, which members for appointment shall be selected from persons who are registered nurses under the provisions of this act, and who shall be actual residents of the state of Montana for a period of at least one year immediately preceding the date of appointment and who have actively engaged in the profession of nursing for five years prior to such appointment, and there shall be at all times at least two members of said board who shall have had at least two years' experience in educational work among nurses, or who have had two or more years' experience in the instruction of nurses in training schools.

The terms for which said members shall be appointed shall be for three years, except those first appointed and those to fill unexpired terms.

Organization of Board—Officers and Compensation.

Section 4. The members of the board shall immediately after their appointment meet at the city of Helena for the purpose of organizing said board, and shall elect one of their number president, and shall elect one of their number secretary, who shall also act as treasurer of the board. The board shall adopt a seal which shall remain in the custody of the secretary; the secretary shall keep the records and minutes of the meeting of the board, and shall record in a suitable book the names of all the nurses and training schools registered under this act. The president and secretary of said board shall hold office for the period of one year, and until their successors are appointed and qualified. The salary of the secretary shall be settled and fixed by the board. The other members of the board shall receive ten (\$10) dollars per day while actually engaged in attendance upon meetings of said board. This shall be in full for their expenses, same to be paid from the funds in the hands of the treasurer of the board, no charge or expense of any kind shall ever become a charge against the state treasury.

The president shall act as inspector of training schools for nurses.

Subjects upon Which Examination to be had.

Section 5. Said board shall provide a schedule of the subjects upon which applicants shall be examined to qualify for registration under this act, which subject shall include elementary anatomy, physiology, medicine, obstetrics, gynecology, surgery, dietetics, home sanitation and nursing.

Duty of President as Inspector of Training Schools—Registration of Nurses.

Section 6. The president acting as inspector of training schools shall inspect all training schools for nurses in the state of Montana, and shall report to the board and the Governor such training schools as shall provide courses of instruction in the subjects required by the board. The secretary shall enter in the register kept for this purpose the names of all nurses who are entitled to registration under the provisions of this act. The schools so registered shall be required to pay to the secretary of the board a fee of twenty-five (\$25) dollars upon registration.

Examination of Applicants.

Section 7. The board shall adopt rules which may be changed from time to time for the examination of applicants for registration under this act, and the board shall meet not less than once each year for the purpose of conducting examinations for applicants for registration. The time and place of meeting of said board shall be advertised in the public press, and notice shall be sent to each training school registered under this act, to each regularly organized association of nurses within the state, to at least one journal of nursing, and notice shall be mailed to each person who has made application for examination under the provisions of this act, at least thirty days prior to said meeting; at such meeting it shall be the duty of the board to examine all persons who are applicants for registration under this act, and to recommend to the Governor each duly qualified applicant who shall have successfully passed said examination.

Certificates of Registration to be Recorded.

Section 8. Every person to whom a certificate of registration shall have been issued shall, within thirty days thereafter, cause the same to be recorded in the office of the county clerk of the county in which such person resides, and all such persons shall, when changing the county of their residence within the state, cause said certificate to be recorded in the office of the county clerk, within thirty days after acquiring residence in said new county, and it is further provided that no county clerk of this state shall demand or receive any fee or compensation for filing, recording, making certified copy of nurse's certificate, or affixing seal to certificate.

Evidence of Qualifications of Applicant for Examination — Registration Fees.

Section 9. All applicants for registration under the provisions of this act shall furnish satisfactory evidence that he, or she, is at least twenty-two years of age, of good moral character, and has been graduated from the training school of nurses connected with a general hospital approved by the board, where a systematic course of at least two years' instruction is given, except in the cases hereinafter provided for; and all persons registered under the provisions of this act shall pay to the secretary of said board, a registration fee of ten (\$10) dollars.

Registration Without Taking Examination.

Section 10. Any person of the required age who has pursued as a business the vocation of nursing for a period of not less than five years prior to the passage of this act, and who presents to the board a certificate that he, or she, is a competent person to give efficient care to the sick, said certificate being signed by one licensed physician in the active practice of the

profession of medicine, and two registered nurses provided for by this act, may register after taking and passing an examination given by the said board at any time within two years following the passage of this act. Any person who shall have graduated prior to July 1, 1917, and after January 1, 1890, from a reputable training school for nurses connected with a general hospital which now gives a course of at least two years' training, and who shall graduate therefrom, shall be entitled to registration under the provisions of this act upon payment of the fee therefor, without examination. And any person who shall have graduated from a training school approved by the board, connected with a special hospital requiring a systematic course of at least two years' training, and who at the time of application shall have obtained in a reputable general hospital one year's additional training in subjects not adequately taught in the training school from which they were graduated, and who shall pass an examination by the board in these additional subjects not adequately taught in the training school from which they were graduated, shall be entitled to registration on the payment of the regular fee, without examination.

The Governor may issue a certificate to any person registered under the law of any state having the requirements equivalent to those of Montana, the board and the Governor to be the sole judges thereof.

Appeal to State Association of Graduate Nurses.

Section 11. Any person who makes application to the board for examination for registration, having the required qualifications as hereinafter provided for, and who shall not pass said examination, or any person registered in any other state who shall be refused registration by the board without examination as provided for in this act, may appeal to the Montana State Association of Graduated Nurses, at the first annual meeting thereafter, and shall abide by the majority vote of said association after a full hearing thereon.

All Applicants to be Examined After July, 1917.

Section 12. On and after July 1, 1917, all applicants for certificates of registration under the provisions of this act, shall pass the examination required by the board before receiving a certificate of registration.

Unlawful Practice Without Certificate.

Section 13. It shall be unlawful hereafter, for any person to practice nursing as a trained, graduated, or registered nurse, without a certificate as herein provided for.

Any person who shall assume a title indicating that said person is a registered nurse, or who shall hold himself, or herself, out to be a registered nurse, and who shall not be registered in accordance with the provisions of this act shall be guilty of a misdemeanor and upon conviction hereof, shall be fined for the first offense, not less than ten (\$10) dollars, nor more than one hundred (\$100) dollars, and for each subsequent offense, not less than two hundred (\$200) dollars, nor more than five hundred dollars.

Interpretation of Act.

Section 14. This act shall not be construed as conferring any authority to practice medicine, or undertake the treatment of disease, in violation of the Medical Practice Act of the state of Montana, or to affect or apply to the gratuitous nursing of the sick by friends or members of the family, nor

to any person nursing the sick for hire who does not in any way assume or pretend to have special training in the profession of nursing, and who also does not pretend to be a registered nurse.

Revocation of Certificate.

Section 15. The Governor may, upon recommendation by the board, revoke any certificate previously issued to the holder thereof, after a hearing by the full board on charges made by any licensed physician in the active practice of his profession, or upon charges made by the registered nurse charging dishonesty, gross incompetence, a habit rendering a nurse unsafe or unfit to care for the sick, or any conduct or act derogatory to the morals or standing of the profession of nursing, or any willful fraud or misrepresentation practiced in securing such certificate.

The person so charged under this section shall be given at least thirty days' notice in writing of the specific charge against him, or her, and of the time and place of hearing said charge by the board, at which time and place such person shall be entitled to appear and to be represented by counsel. Upon the revocation of any certificate heretofore issued, the same shall be null and void, and the secretary shall take the name of the holder thereof from the roll of registered nurses, and shall give notice to each county clerk within the state where said certificate may have been registered, of the revocation thereof, and it shall be the duty of such county clerk to note upon such record the fact that such certificate has been revoked and the date of revocation.

Section 16. This act shall be in full force and effect from and after its passage and approval.

Section 17. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 3, 1913.

The State Board of Examiners of Nurses has a duty not merely ministerial but quasi judicial, and the performance of the duty, therefore, in any particular way cannot be compelled by mandamus. *State ex rel. Gravely v. Stewart*, 48 Mont. 347, 137 Pac.

854. Moreover, the honest judgment of the board, no matter how erroneous, is not subject to review. *State ex rel. Marshall v. District Court*, 50 Mont. 294, 146 Pac. 743.

REGULATION OF VETERINARY PRACTICE.

Chapter 82, Laws 1913, page 344.

"An act to regulate the practice of veterinary medicine and surgery in the state of Montana; and to establish a Board of Examiners in Veterinary Medicine and Surgery; and to define offenses committed contrary to the provisions of this act; and providing penalties for the violation thereof."

Be it enacted by the Legislative Assembly of the State of Montana:

Appointment of State Board of Veterinary Medical Examiners.

Section 1. That there be and is hereby created a State Board of Veterinary Medical Examiners to be appointed by the Governor of the state of Montana, which shall consist of three reputable practitioners of veterinary medicine and surgery, who shall have graduated from some college authorized by law and recognized by the American Veterinary Medical Association to confer degrees, and each of whom, shall, after the first board has

been appointed, be licensed under this act. The appointments first made shall be one for one year, one for two years, and one for four years, and, thereafter, appointments shall be made for the term of four years. The Montana State Veterinary Medical Society shall, at each annual meeting, nominate twice the number of examiners to be appointed that year on the board. The names of such nominees shall be annually transmitted under seal by the president and secretary prior to May 1st, to the Governor, who shall, prior to August 1st, appoint from such lists the examiners that will be required to fill any vacancies that will occur from expiration of term on July 31st. Any other vacancy, however, occurring, shall likewise be filled by the Governor for the unexpired term. Each nominee, before appointment, shall furnish to the Governor proof that he has received a degree in veterinary medicine from an authorized veterinary medical school and that he has actually and legally practiced veterinary medicine in this state for at least two years. If no nominees are legally before him from the society, the Governor may appoint from members of the veterinary profession in good standing in Montana without restriction. The Governor may, after due notice and hearing, remove any examiner for misconduct, incapacity or neglect of duty.

Organization of Board—Quorum—Powers.

Section 2. Every veterinary medical examiner shall receive a certificate of appointment from the Governor, and, before beginning his term of office, shall file with the Secretary of State, the constitutional oath of office. The board shall annually elect from its members a president, vice-president and secretary-treasurer, and shall hold two regular meetings each year. At any meeting a majority shall constitute a quorum. If any member of the board shall, without cause, absent himself from two of its regular meetings consecutively, his office shall be deemed vacant. The boards may take testimony and proofs concerning all matters within its jurisdiction. The board may make all by-laws and rules not inconsistent with law needed in performing its duties.

Expenses and Funds—Records and Report.

Section 3. Each member of the board shall be entitled to receive all necessary traveling and incidental expenses, provided such expenses shall not exceed the amount in the treasury during any fiscal year. The secretary-treasurer shall receive an additional salary to be fixed by the board and not to exceed one hundred and fifty dollars per annum (\$150) per month. The secretary-treasurer shall give bond in such sum and with such conditions as the board may from time to time direct. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements, and a full and accurate list of all persons licensed and registered by it, and such records shall be public records, and shall, at all times, be open to public inspection. The secretary-treasurer of said board shall be the legal custodian of all moneys received for licenses or certificates of registration, as provided by this article, and up to and including the sum of one thousand dollars (\$1,000) which shall constitute a trust fund to be used, besides salaries and other expenses of the board, in carrying on prosecutions under the provisions of this act. If, at any time, the amount of money received, after deducting such salaries and expenses, shall amount to more than one thousand dollars (\$1,000), the secretary-treasurer shall forward the same to the treasurer of the state of Montana, and receive his

official receipt for same. Said board shall, not later than July 15th of each year, submit to the Governor a full and complete report of its proceedings during the twelve months immediately preceding.

Applications for License to Practice—Examinations.

Section 4. Any person desiring to begin the practice of veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 10 of this act, shall make application to said Board of Examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of having graduated in and received a degree from a legally authorized veterinary medical school recognized by the American Veterinary Medical Association; said school or college having a curriculum requiring a three-year course or its equivalent for graduation. Every person applying to said board for license to practice shall pay to the board the fee of ten dollars (\$10) which fee shall in no case be refunded, and which shall become a part of the funds of the treasury of the board. Said board shall, by means of examinations, either oral or written as the board may determine, ascertain the professional qualifications for license of all applicants under this act, and shall issue such license to all who are found upon examination to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination to be competent. Such examination shall be held at a time and place or places specified by said board, and shall include suitable questions for a thorough examination in comparative anatomy, physiology and hygiene, in chemistry and veterinary surgery, obstetrics, pathology and diagnosis and therapeutics, including practice and materia medica, bacteriology, parasitology and other branches deemed advisable by the board. Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued. Provided that veterinarians holding a diploma from a recognized veterinary medical school, who are at the time of the passage and approval of this act engaged in the practice of veterinary medicine in the state of Montana, shall be entitled to a license without such examination. Any candidate failing in one subject, with a general average of eighty per cent in the others, may be re-examined in that subject at any regular examination; failing in one subject with a lower average or in two or more subjects, may be admitted to a subsequent examination on original fee after six months have elapsed and must then take the examination in all subjects. The board may issue temporary license to such candidate, allowing him or her to practice pending the successful passage of an examination.

Application for License as Farrier.

Section 5. Any person desiring to begin the practice of treating domestic animals in the state of Montana under the title of farrier, shall make application to said Board of Veterinary Medical Examiners on or before July 1, 1913, so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by the fee prescribed in section 4 of this act, and satisfactory evidence of the good moral character of the applicant, who shall present satisfactory evidence of having resided in the state

of Montana for a period of twenty-four months immediately previous to the passage and approval of this act, and of having treated domestic animals as a part of his or her avocation during that period, and a license shall be granted. Such license shall entitle him or her to all the rights and privileges of this act, except those contained in section 8.

Farrier Defined.

Section 6. Any person who has had experience in treating diseases of domestic animals.

Issuance, Registration and Revocation of Licenses.

Section 7. The State Board of Veterinary Medical Examiners will, at the conclusion of a regular examination, if in their judgment the applicant is duly qualified therefor, issue a license to practice veterinary medicine and surgery or farriery. Every license so granted by the board shall be issued under seal and shall be signed by each acting Veterinary Medical Examiner of the board, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and all other matters required by law, and that after full examination he or she has been found duly qualified to practice. Each person licensed by the board to practice veterinary medicine or veterinary surgery or farriery in this state, shall procure from the secretary of the board, on or before July 1st, annually, his certificate of registration. Such certificate shall be issued by the secretary upon the payment of a fee to be fixed by the board, not exceeding the sum of two dollars (\$2), and certificates so issued shall be prima facie evidence of the right of the holder to practice veterinary medicine or veterinary surgery or farriery in this state during the time for which they are issued. Any certificate of license, granted by the board, may be revoked upon conviction of the party holding such certificate or license, of a violation of any of the provisions of this act.

Display of Licenses—Licensees from Other States.

Section 8. Every person practicing veterinary medicine or veterinary surgery in the state of Montana, or representing himself as so practicing, shall display or cause to be displayed conspicuously in his or her usual place of business, license or certificate of registration issued to him or pursuant to the provisions of this act. The Board of Examiners shall make arrangement with similar boards in the several states in so far as practical, whereby due credit for state and territorial licenses will be allowed in the state of Montana to such licensees of said board as desire to secure license or practice veterinary medicine or surgery in this state, and whereby licensees of the Board of Veterinary Medical Examiners in this state will secure due credit for license issued by said board, whenever such licensees desire to secure license to practice in any other state or territory; but no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of veterinary medicine or surgery in the state of Montana. The board may, if deemed necessary, require an examination of applicants for license from other states after careful consideration of credentials from such states.

Practice of Veterinary Medicine and Surgery Defined.

Section 9. Any person shall be regarded as practicing veterinary medicine or surgery in the state of Montana, who shall append or cause to be

appended to his name upon any display or advertisement published the letters V. S., D. V. M., V. M. D., M. D. C., D. V. S., or M. R. C. V. S., or the words, "Veterinary," "Veterinarian," "Veterinary Surgeon," "Veterinary Dentist," "Veterinary Horseshoer," "Horse Dentist" or "Horse Doctor," or who shall publicly profess to do any of these things, directly or indirectly, as a veterinarian. No person shall practice veterinary medicine or veterinary surgery, or farriery, in the state of Montana after July 1, 1913, unless licensed by the State Board of Veterinary Medical Examiners of the state of Montana and registered as required by this article; nor shall any person practice veterinary medicine, surgery, or farriery, whose authority to practice is suspended or revoked by said board.

Revocation of Certificate.

Section 10. On hearing, the board may revoke any certificate which is obtained by fraud or where the holder is guilty of gross moral or professional misconduct.

Interpretation of Statute—Persons not Embraced Within Provisions.

Section 11. This article shall not be construed to affect commissioned veterinary medical officers serving in the United States army or in the United States Bureau of Animal Industry while so commissioned; or any person doing castrating or spaying, or giving gratuitous services; or any person treating an animal belonging to himself as the case may be; or any lawfully qualified veterinarian in other states or any foreign country meeting legally registered veterinarians in this state in consultation; or any veterinarian residing on a border of a neighboring state and duly authorized under the laws thereof to practice veterinary medicine therein, whose practice extends into this state, and who does not open an office or appoint a place to meet patients or receive calls within this state.

Practice in Violation of Law—Penalties.

Section 12. Every person who shall practice veterinary medicine or farriery within this state without lawful registration or in violation of any provisions of this article shall forfeit to the county wherein such person shall so practice, or in which any violation shall be committed, not to exceed fifty dollars (\$50) for every such violation, and for every day of such unlawful practice, and any incorporated veterinary medical society of the state may bring action in the name of such county for the collection of such penalties, and the expense incurred by such society in such prosecution, including necessary counsel fees, may be retained by such society out of the penalties so collected, and the residue if any, shall be paid into the county treasury. The State Board of Veterinary Medical Examiners may out of the funds in the treasury, when sufficient proof is before them, begin proceedings for prosecutions under the provisions of this act, independent of such state societies. Any person who shall practice veterinary medicine or farriery under a false or assumed name, or who shall falsely personate another practitioner of a like or different name shall be guilty of a felony; and any person guilty of violating any of the other provisions of this article, not otherwise specifically punished herein, or who shall buy, sell or obtain any veterinary medical diploma, license, record or registration, or who shall aid or abet such buying, selling or fraudulently obtaining, or who shall practice veterinary medicine or farriery under cover of a license or diploma illegally

obtained, or signed or issued unlawfully under fraudulent representation, or mistake of fact in material regard, shall attempt to practice veterinary medicine or farriery, and any person who shall, without having been authorized so to do legally, append any veterinary title to his or her name, or shall assume or advertise any veterinary title in such manner as to convey the impression that he or she is a lawful practitioner of veterinary medicine or farriery shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than fifty dollars, or by imprisonment in the county jail not more than twenty-five days, or both such fine and imprisonment.

All acts and parts of acts in conflict herewith are hereby repealed.

Whereas an emergency exists, this act shall take effect immediately upon its passage and approval as provided by law.

Approved March 13, 1913.

REGULATION OF PLUMBERS.

Chapter 29, Laws 1913, page 28.

An act to establish a system of examination for master and journeymen plumbers; fixing the fees to be charged for licenses, and the disposition of the fund thus created, and providing penalties for the violation of the provisions of this act.

Be it enacted by the Legislative Assembly of the State of Montana:

Plumber must Procure License.

Section 1. Any person working at the business of plumbing, in any incorporated city or town in this state, containing more than three thousand inhabitants, either as a master plumber or as a journeyman plumber, shall first secure a license as hereinafter provided.

Application for License.

Section 2. Any such person desiring to work at the business of plumbing in any such city or town shall file his application for a license with the secretary of the Board of Examiners, of such city or town, and shall, at such time and place as may be designated by the board of examiners of plumbers of such city or town, be examined as to his qualifications for working in such business.

Board of Plumbing Examiners—Examination of Applicants.

Section 3. Within sixty days after this act becomes a law, the mayor of each such city or town, shall appoint a board of plumbing examiners consisting of three members—one journeyman plumber, one master plumber, and the health officer of said city or town. Two of the members of said board shall be practical plumbers, well versed in modern sanitary plumbing, sanitation and sewerage, and the members of said board shall serve for a period of three years from the date of their appointment; provided, however, the first board shall serve as follows: One member for one year, one member for two years and one member for three years, and the mayor in making the appointment shall designate the time that each member constituting the first board shall serve. Thereafter upon the expiration of the term of office of each member of the board, or when a vacancy occurs, the mayor shall make a new appointment for unexpired

term or for a period of three years. In those cities which have a plumbing inspector, such plumbing inspector, shall, ex officio, be a member of such Board of Examiners. The members of the said board shall be entitled to a compensation of five dollars per diem, each, for each and every day while actually engaged in the work of the board. The compensation, however, to be paid from the revenues realized under the provisions of this act, but not otherwise. Any applicant for a license to work at the business of plumbing in any such city or town shall be examined as to his qualifications by the board of examiners of plumbers for such city or town. It shall be the duty of the said board to examine each applicant for a license as provided for in this act, two to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a license shall be issued to such applicant, for such license, authorizing him to engage in the business and occupation of a master plumber, or a journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or a journeyman plumber in any of said cities or towns.

Application by Master or Journeymen Plumber for License.

Section 4. Any person, firm or corporation, desiring to engage in or work in the business of plumbing, either as a master plumber or as a journeyman plumber, in any of said cities or towns, shall apply to the secretary of said Board of Plumbing Examiners in such city or town, by filing a written application with the secretary of the board, stating his place of residence, age, experience and the place where he has acquired his experience, and shall at such time and place as may be designated by the said board, as herein provided for, be examined as to his qualifications for said license. In the case of a firm or corporation, the examination and issuing of a license to any one member of the firm or to the manager of the corporation, shall satisfy the requirements of this act as to master plumbers, but not as to journeymen plumbers; provided, however, that no person shall do the work of a master plumber, unless licensed as provided for in this act.

Examination Fees—Renewal of Licenses.

Section 5. No applicant for a master plumber's license shall be entitled to submit to the examinations prescribed by the said Board of Plumbing Examiners until he shall have deposited with the secretary of said board the sum of ten (\$10) dollars as an examination fee, and no applicant for a journeyman plumber's license shall be entitled to submit to the examination prescribed by the said Board of Plumbing Examiners, until he shall have deposited with the secretary of said board the sum of two (\$2) dollars as an examination fee, such examination fee to be returned to the applicant in case he fails to pass the examination and is refused a license; each license when issued shall expire one year from the date of its issuance and shall have no force or effect after the expiration of one year after the date of its issuance. Any license, however, issued to a master plumber or a journeyman plumber shall be renewed annually, without examination at any time prior to its expiration, by a written request for its renewal directed to the secretary of the said Board of Plumbing Examiners and the payment of the sum of two dollars and fifty cents

(\$2.50) for a renewal of a master plumber's license and the sum of one (\$1) dollar for a journeyman plumber's license, and any such renewal shall also be for the period of one year.

Apprentices—Rules and Regulations.

Section 6. Nothing in this act shall prohibit any person from working as an apprentice in said trade of plumbing with a plumber duly licensed by said board as herein provided for, and under such rules and regulations as may be prescribed from time to time by said Board of Plumbing Examiners; provided, the name and residence of each apprentice and the names and residences of their employers shall be duly filed with said board, and a record in a suitable book, to be provided by said board, shall be kept by said board, showing the names and residences of such apprentices.

Use of Moneys Paid as License Fee.

Section 7. All moneys paid for license fees as provided for in this act shall be placed in the custody of the city or town treasurer, who shall keep such sums in a distinct fund, and any moneys in such fund shall be applied in defraying any expenses incurred by the board of examiners of plumbers in any such city or town, in carrying out the provisions of this act.

Revocation of Licenses.

Section 8. The license and permit granted as herein provided may be at any time revoked for incompetency, dereliction of duty or other sufficient cause after a full and fair hearing by said board.

Quorum of Board of Examiners.

Section 9. A majority of said Board of Plumbing Examiners shall constitute a quorum for the purpose of transacting any and all business that may come before the board.

Issuance of License Without Examination.

Section 10. All master and journeyman plumbers now engaged in the business of actually or regularly working at the trade of plumbing shall be entitled to a license to be issued by said Board of Plumbing Examiners, immediately after its organization as provided for by this act, without submitting or being required to submit to any examination whatever, upon the payment by each of the applicants for such license of the sum of ten (\$10) dollars in the case of a master plumber and two (\$2) dollars in the case of a journeyman plumber, and such license, when issued, shall be renewed from time to time annually as hereinbefore provided.

Violation of Act a Misdemeanor.

Section 11. Any person working at the business of plumbing or maintaining or conducting a plumbing-shop in any incorporated city or town in this state, containing more than three thousand inhabitants, who violates any provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than ten (\$10) dollars and not more than one hundred (\$100) dollars for each separate offense.

Section 12. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Section 13. This act shall take effect on and after June the first, 1913.

Approved February 21, 1913.

Editorial Notes.

Validity and interpretation of statutes imposing taxes on plumbers. Ann. Cas. 1913E, 1081.

PURE FOOD AND DRUG ACT.

Chapter 130, Laws 1911, page 358.

An act forbidding the manufacture, sale or offering for sale of any adulterated or misbranded foods or drugs, defining foods and drugs, stating wherein adulteration and misbranding of foods and drugs shall consist, and defining the duties of the State Board of Health with relation to food and drugs, their inspection, purity and misbranding; constituting local and county health officers, local and county food inspectors, regulating the slaughter of animals and their preparation for food, regulating the purity of milk and directing the manner in which the same shall be handled, providing for the tuberculin testing of all dairy cattle, requiring all persons conducting any business in which food products are handled to secure a license, without cost, from the State Board of Health, providing for a chemist to the State Board of Health and appropriating money therefor, authorizing the State Board of Health to make rules and regulations for the enforcement of the provisions of this act, providing an appropriation for covering the expenses incurred by the State Board of Health in enforcing the provisions of this act, providing penalties for the violation of the provisions of this act and repealing acts and parts of acts in conflict herewith.

Be it enacted by the Legislative Assembly of the State of Montana:

Adulterated or Misbranded Drugs and Food—Unlawful Manufacture or Sale.

Section 1. It shall be unlawful for any person, persons, firm or corporation, within this state, to manufacture for sale, within this state sell, offer for sale or have within his or their possession with the intent to sell within this state any drugs or article of food which is adulterated or misbranded within the meaning of this act. The term "drug" as used in this act, shall include all medicines or preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animals. The term "food," as used in this act, shall include all articles used as food, drink, confectionery, or condiment by man or animals, whether simple, mixed or compound.

What Deemed "Adulterated."

Section 2. For the purposes of this act an article shall be deemed as adulterated; In case of drugs:

First. When a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, if it differs from the

standard strength, quality or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary, official at the time of investigation; provided, that no drug shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the bottle, box or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In the case of foods:—

First. In the case of confectionery, if it contains terra alba, barytes, tale, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

Second. If any substance or substances have been mixed with it so as to reduce, or lower, or injuriously affect its quality or strength.

Third. If any substance has been wholly or in part substituted for the article.

Fourth. If any valuable constituent has been wholly or in part abstracted from it.

Fifth. If it contains any proportion of a filthy, diseased, decomposed, putrid or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the product of a diseased animal.

Sixth. If it is mixed, colored, coated, polished, powdered or stained in a manner whereby damage or inferiority is concealed, or whereby it is made to appear better or of greater value than it really is.

Seventh. If it contains any added poisonous or other added deleterious ingredient.

Eighth. If it contains any added antiseptic or preservative substance except common salt, saltpeter, cane-sugar, beet-sugar, vinegar, spices, or in smoked foods, the natural products of the smoking process, or other harmless preservative whose use is authorized by the State Board of Health, and no preservative shall be used in greater quantity than the rules and regulations of the State Board of Health shall designate.

Adulterated Milk Forbidden.

Section 3. No person either by himself or by his servant or agent or as the servant or agent of another person, shall sell, exchange or deliver, expose or offer for sale or exchange adulterated milk, or milk to which water or any foreign substance has been added, milk produced from cows which have been fed on fermenting refuse from distilleries, breweries, or sugar factories or stable bedding or barnyard refuse, provided that fermenting pulp fed in conjunction with ground alfalfa and syrup be excepted, or from sick or diseased cows, or as pure, milk from which the cream or a part thereof has been removed, or milk collected or kept or handled under conditions which are not cleanly or sanitary and which do not conform to the rules and regulations of the State Board of Health made in conformity with the provisions of this act, or milk containing less than eight and one half ($8\frac{1}{2}$) per cent of milk solids, exclusive of fat, and three and twenty-five hundredths (3.25) per cent of milk fat, or milk which contains any added color preservative, or as cream, milk containing less than twenty (20) per cent of milk fat.

Butter, Cheese and Milk Products.

Section 4. No butter, cheese or other milk product shall be sold or offered for sale in this state unless made from milk, the sale of which is not prohibited under the provisions of section 3 of this act; provided, that cheese made from skim milk may be sold as "skim cheese," when branded in bold-faced letters not less than one inch in height plainly stating that said article of food is made from skim milk and provided, further, that renovated butter or butter made by any other process than that of churning milk salable under the provisions of section 3 shall be branded so as to plainly indicate the method of making such butter and the contents thereof and to the entire satisfaction of the State Board of Health.

Weights and Measures—Size of Gallon and Pound.

Section 5. In case of food sold by weight or measure, all measures shall be in gallons or fractions thereof, a gallon to contain two hundred and thirty-one cubic inches and each fraction of a gallon to contain its corresponding fraction of two hundred and thirty-one (231) cubic inches. Where weights or measures are stated in pounds and ounces, they shall be exclusive of the wrapper or other container and each pound shall contain sixteen (16) ounces, each ounce containing four hundred and thirty-seven and one-half ($437\frac{1}{2}$) grains. Any person, persons, firm or corporation selling or offering for sale any article of food as a pound, or any multiple thereof, except by actual weight, the net weight of which is less than sixteen (16) ounces, or the proper multiple thereon to represent the number of pounds sold or offered for sale, and any person, persons, firm or corporation selling or offering for sale any quantity of food as a gallon, or any fraction thereof, which does not contain two hundred and thirty-one (231) cubic inches net measure or the fraction thereof represented by the fraction of a gallon offered for sale or sold, shall be guilty of a misdemeanor.

Tuberculin Test of Cattle in Dairies.

Section 6. The State Veterinarian, either in person or by his deputies shall tuberculin test all cattle used in and about all dairies in the state of Montana at least once during each calendar year; and all persons, firms or corporations conducting a dairy in this state shall file with the secretary of the State Board of Health a certificate for each cow hereafter added to his dairy, which certificate shall be signed by a veterinarian approved by the State Board of Health and shall state that such cow has been tuberculin tested by him and found to be free from tuberculosis, and such certificate shall contain a description of such cow, which description shall be sufficiently complete to identify the cow; and any person, firm or corporation using any cow in his dairy, or keeping any cow on his dairy premises, which has not been tuberculin tested and found free from tuberculosis shall be guilty of a misdemeanor and shall be deemed guilty of selling milk from diseased cows. For the purpose of this act any person shall be deemed as conducting a dairy who offers for sale any milk or cream, or who sells milk or cream to any butter factory, creamery or other place where milk or milk products are manufactured or sold.

Animals Slaughtered Under Unsanitary Conditions—Unsanitary Conditions Defined.

Section 7. It shall be unlawful for any person, persons, firm or corporation to sell within this state or to have within his or their possession

with the intent to sell within this state for human food, the carcass or parts of the carcass of any animal which has been slaughtered, prepared, handled or kept under unsanitary condition; and unsanitary conditions shall be deemed to exist whenever and wherever any one or more of the following conditions are found to appear, to wit: If the slaughter-house is dilapidated or in a state of decay; if the floor or side walls are soaked with decaying blood or other animal matter, if efficient fly screens are not provided, if the drainage of the slaughter-house yard is not efficient, if maggots or filthy pools or hog wallows exist in the slaughter-house yard or under the slaughter-house floor, if the water supply used in connection with the cleaning or preparing of the meat is not pure and uncontaminated; if the hogs are kept in the slaughter-house yard or fed therein on animal offal, or if the odors of putrefication plainly exists in or about the slaughter-house; if carcasses or parts of carcasses are transported from place to place when not covered with clean white cloths, or if kept in unclean or bad smelling refrigerator or refrigerators, or if kept in unclean or foul smelling storerooms. It shall be unlawful for any person, persons, firm or corporation to have in his or their possession with intent to sell the carcass of any animal or fowl which has died from any cause other than being slaughtered in a sanitary manner, or the carcass or part of the carcass of any animal that shows evidence of any disease or that came from a sick or diseased animal, or the carcass or part of the carcass of any calf that was killed before it had attained the age of four weeks.

Sale of Bad Eggs.

It shall be unlawful for any person, persons, firm or corporation to sell or offer for sale any eggs after the same have been placed in an incubator, or to sell or offer for sale to be used as food, knowingly, eggs in a rotten, decayed or decaying condition.

Duty of Peace and Health Officers to Seize Unwholesome Food Offered for Sale.

It shall be the duty of all peace or health officers to seize any animal carcass or parts of carcasses or any domestic or wild fowl, eggs, game, fish or other food product found to be unwholesome and which are intended for sale or offered for sale for human food, or which have been slaughtered or prepared, handled or kept under unsanitary conditions as herein defined or as the rules and regulations of the State Board of Health may designate, and shall deliver the same forthwith to and before the nearest police judge or justice of the peace, together with all information obtained, and said police judge or said justice of the peace shall issue warrants of arrest for all persons believed to have violated any provision of this act, and said cause shall be tried at an early date thereafter. The said police judge or said justice of the peace shall immediately drench the unwholesome food brought before him with kerosene and require the owner thereof to immediately dispose of the same in a sanitary manner, or he may, in his discretion, order the unwholesome food rendered into grease and tannage.

Term "Misbranded" as Used Herein Defined.

Section 8. The term "misbranded" as used herein shall apply to all drugs, or articles of food, or articles which enter into the composition of

food or drugs, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the state, territory or country in which it is manufactured or produced, unless the word "process," or "type," in plain, legible and obvious English print, type or script immediately follows the state, territory, country, locality or brand designated. That for the purpose of this act an article shall be deemed to be misbranded:

In the case of drugs:

First. If it be an imitation or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents differing in quality or quantity from the original contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannibis indica, chloral hydrate, acetanilide, phenacetine, antipyrine, or any derivative or any preparation of any such substance contained therein; provided, that said requirements as to statement of contents shall not be operative until on and after January 1, 1912; and provided, further, that the requirements of this section shall not apply to medical prescriptions written by physicians and surgeons, dentists or veterinary surgeons, nor to extemporaneous preparations dispensed by druggists, nor shall the provisions of this section be construed as prohibiting legally qualified physicians and surgeons, dentists and veterinary surgeons from administering drugs to patients under their care.

In the case of foods:

First. If it is an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be foreign article when not so, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannibis indica, chloral hydrate, acetanilide, phenacetine, or antipyrine or any derivative or any preparation of any such substance or substances contained therein; provided, that such statement shall not be required as to articles of food in the hands of wholesalers or retailers on or prior to January 1, 1912.

Third. If in the package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it, or its label, shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular; provided, that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures of compounds which may be now or from time to time hereafter become known as articles of food, under their own distinctive names and heretofore known to the consumer and not an imitation of or offered for sale under the distinctive name or brand of another article, if the name be accompanied on the same label or brand with the statement of the place where said article has been manufactured or produced; provided further, for the purposes of this act, a drug or food shall not be deemed misbranded, marked, labeled or tagged with the distinctive trade or commercial name heretofore known to the consumer.

Second. In the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly printed on the package in which it is offered for sale; provided, that the term "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring; and, provided, further, that in cases of spirituous liquors the term like substances shall be construed to mean pure distillates of grain or pure distillates of fruit and grain; and provided, further, that nothing in this act shall be construed as compelling or requiring proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas except so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

When Dealer not to be Prosecuted—Guaranties.

Section 9. No dealer shall be prosecuted under the provisions of this act for selling or offering for sale any article of food or drugs, as defined herein, when the same is found to be adulterated or misbranded within the meaning of this act, in the original, unbroken package in which it was received by said dealer, when he can establish a guaranty, signed by the wholesaler, jobber or agent or other party residing in the United States from whom he purchased such article, or if a proper printed guaranty of the manufacturer with his address be upon the package or container, to the effect that the same is not adulterated or misbranded in the original unbroken package in which the said article was received by said dealer, within the meaning of this act, designating it, or within the meaning of the food and drug act, enacted by the Senate and House of Representatives of the United States of America in Congress assembled June 30, 1906. Said guaranty to afford protection must contain the name and address of the party or parties making the sale of such article to such dealer or of the manufacturer thereof as herein specified, and in such case said party shall be amenable to prosecution, fines and other penalties which would attach in due course to the dealer under the provisions of this act.

License from the State Board of Health.

Section 10. It shall be unlawful for any person, persons, firm or corporation to conduct any bakery, confectionery, cannery, packing-house, slaughter-house, meat market, dairy, restaurant, hotel, dining-car or lunch counter in the state without having a license issued by the State Board of Health of Montana which license shall be issued by said board without charge to the licensee; provided, that such license shall not be required before January 1, 1912. All licenses shall be made to expire on the last day of December of the current year in which it is issued and shall be re-

newed by the said State Board of Health upon request by the licensee; provided, that when the State Board of Health shall find that the place for which such license is issued is not conducted in accordance with the rules and regulations of said Board of Health, made and promulgated in accordance with the provisions of this act, then said board shall revoke such license and shall not renew the same until such place is put in a sanitary condition in accordance with such rules and regulations. Licenses shall be issued upon application made on proper blank form supplied by the State Board of Health and all licenses shall be numbered consecutively. The licensee shall keep such license plainly exposed in his place of business or the number thereof, preceded by the word license, painted on both signs of each wagon used by him in letters not less than two inches high and one and one-half inches wide. The revocation of a license issued under the provisions of this section shall not be construed as freeing any person, persons, firm or corporation from prosecution for violating the provisions of this act or of the rules and regulations of the State Board of Health issued in conformity with the provisions of this act.

Duties and Powers of State Board of Health.

Section 11. It shall be the duty of the State Board of Health to enforce the provisions of this act. They shall, through their secretary and through local and county health officers, make all necessary investigations and inspections in reference to all food and drugs, and for this purpose the state, county, and local health officers shall be food and drug inspectors for their respective districts; each local and county health officer shall make regular inspections as the rules and regulations of the State Board of Health may direct, and such special inspections as said Board of Health may from time to time order made, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the State Board of Health may direct. Should any health officer fail, neglect or refuse to make any such regular or special inspection or fail to make any report in the manner and at the time designated by the State Board of Health, or should he make a false report of any condition that may exist within his district, the State Board of Health shall notify the mayor of the city or town, in the case of a local health officer, or the chairman of the Board of County Commissioners, in the case of a county health officer, of such negligence on the part of such health officer, and said State Board of Health may, in their discretion, order the removal from office of such delinquent health officer, and when such an order is issued by the State Board of Health, the mayor of the city or town, in the case of a local health officer, or the Board of County Commissioners, in the case of a county health officer, shall immediately declare the office of health officer vacant and shall appoint another competent and legally qualified physician and surgeon to fill the office.

The State Board of Health shall adopt all needful rules and regulations for the thorough and uniform enforcement of the provisions of this act throughout the state, and shall adopt and promulgate rules and regulations relative to the sanitary management of all places designated in section ten (10) of this act, and they shall adopt rules regulating the minimum standards for foods and drugs, defining specific adulterations and declaring proper methods of collecting and examining all drugs and articles of food, and the violation of any such rule or regulation shall be punished, on conviction, as set forth in section fifteen (15) of this act.; provided, that such

rules and regulations made and promulgated by the State Board of Health shall at all times conform to the rules and regulations of the National Food and Drug Commission made under the food and drugs act of June 30, 1906.

It shall be the duty of the State Board of Health, at the instance of any person, firm or corporation, or on their own volition to examine, analyze, and determine the purity, branding and labeling of any food or drug placed upon the market or offered for sale in the state of Montana, and if found legal, they shall certify to the individual, firm or corporation manufacturing, selling or offering for sale such food or drug that such food or drug is legal.

No prosecution shall follow until such time as the individual, firm or corporation has been notified by the State Board of Health wherein any food or drug fails to meet the requirements of the rules and regulations of the State Board of Health, and such time to remedy the failure as the State Board of Health may rule.

All state, local, and county health officers are hereby authorized to enter any premises where any article of food or drug is sold, offered for sale, manufactured, cooked, stored or treated in any way, for the purpose of inspecting such premises and the manner in which such food or drug is handled.

Samples of Food and Drugs for Analysis—Officer.

Section 12. Every person offering or exposing for sale or delivering to a purchaser any drug or article of food included in the provisions of this act, shall furnish to any inspector or other officer or agent appointed hereunder, who shall apply to him for the purpose and shall tender to him the value of the same, a sample sufficient for analysis of any drug or article of food which is in his possession. Whoever hinders, obstructs or in any way interferes with an inspector or other officer or agent appointed hereunder, in the performance of his duty, shall, upon conviction, be fined in any sum not less than ten (10) dollars nor more than one hundred (100) dollars.

Section 13. The Professor of Chemistry at the Montana State Agricultural College shall be the chemist to the State Board of Health and he shall make all analyses that may be required by the State Board of Health in the enforcement of the provisions of this act, and such other analysis as they may require in the enforcement of the laws of the state pertaining to public health matters.

Appropriations—Assistant Chemist.

In order to enable the said Professor of Chemistry to perform these duties the sum of fifteen hundred (\$1500) dollars is hereby appropriated from the general fund of the state for the purpose of employing such assistants as he may need during the year 1911, and a like amount is hereby appropriated from the general fund of the state for defraying such expenses during the year 1912.

Section 14. The sum of seven thousand five hundred (\$7,500) dollars, or as much thereof as may be needed, is hereby appropriated from the general fund of the state for the purpose of defraying all expenses incurred by the State Board of Health in enforcing the provisions of this act during the year ending March 1, 1912, and the sum of six thousand five hundred (\$6,500) dollars or so much thereof as may be needed is hereby appropriated from the general fund of the state for the purpose of defraying all

expenses incurred by said board in the enforcement of the provisions of this act during the year ending March, 1913.

Violations of Act—Penalties.

Section 15. Except as elsewhere provided in this act, any person, persons, firm or corporation violating any of the provisions of this act, shall upon conviction of the first offense, be punished by a fine of not less than twenty-five (25) dollars nor more than seventy-five (75) dollars; for the second offense, by a fine of not less than fifty (50) dollars, nor more than two hundred (200) dollars; and for the third and subsequent offenses, by a fine of not less than one hundred (100) dollars and imprisonment in the county jail for not less than thirty nor more than ninety days, and all fines collected for violations of this act shall be paid to the county treasurer of the proper county, who shall remit the same to the State Treasurer of the state of Montana, and said moneys shall be placed to the credit of the State Board of Health Maintenance Fund.

Duty of County Attorney to Prosecute—Report of Chemist Presumptive Evidence.

Section 16. Whenever the State Board of Health shall furnish evidence to the county attorney of any county in this state, such county attorney shall prosecute any person, persons, firm or corporation violating any provision of this act or any rule or regulation made by the State Board of Health made in conformity with the provisions of this act, and the report of the chemist of the Montana State Agricultural College, stating that any drug or food examined by him is found to be impure or below the standard required by the provisions of this act or the rules and regulations of the State Board of Health, shall be taken as presumptive evidence of the impurity of such drug or article of food.

Limit to rules Promulgated by State Board of Health.

Section 17. No rules or regulations shall be promulgated by the State Board of Health under the provisions of this act which do not conform to the rules and regulations promulgated or to be hereafter promulgated by the National Government under the Food and Drugs Act of Congress of June 30, 1906; and no article of foods or drugs shall be deemed to be adulterated, misbranded or otherwise subject to the provisions of this act when such article of food or drugs conforms to the rules and regulations of the United States government under any national act or acts.

Section 18. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Section 19. This act shall be in full force and effect from and after January 1, 1912.

Approved March 8, 1911.

Editorial Notes.

What is embraced within term "food." Ann. Cas. 1913E, 1292.

SALE OF IMPORTED MEATS AND DAIRY PRODUCTS.

Chapter 11, Laws 1915, page 13.

"An act regulating the sale of imported meats, lard, and dairy products within the state of Montana."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Every person, company, or corporation, selling or offering for sale in the state of Montana such food products as meat, lard, eggs, butter or any other dairy products, imported from foreign countries, shall affix by pasting upon such food products sold or offered for sale, or upon the case or package in which such food products may be contained, a label upon which shall be printed the name of the country or countries from which such product has been imported, the date when shipped, and the date when received by the person, company, or corporation selling or offering same for sale.

Section 2. Any person, company, or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25) or not more than one hundred dollars (\$100), or by imprisonment in the county jail for not less than five (5) days or more than thirty (30) days, or by both such fine and imprisonment.

Approved February 9, 1915.

Editorial Notes.

Statutory regulation of meat dealers. Ann. Cas. 1912B, 510.

SALE OF OPIUM AND COCAINE.

Chapter 11, Laws 1911, page 14.

"An act to regulate the dispensing, sale and giving away of opium, morphine, alkaloid-cocaine or alpha or beta eucaine, or codeine or heroin, or any derivative, mixture or preparation of any of them, the prescribing of the same by licensed physicians or veterinarians, providing penalty for the violation thereof, and repealing all acts and parts of acts in conflict herewith."

Section 1. It shall be unlawful for any person to sell, furnish or dispose of any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine, or codeine or heroin, or any derivative, mixture or preparation of any of them, except upon the signed prescription of a physician, or veterinarian duly licensed under the laws of this state, which prescription shall be retained by the person dispensing the same, shall be filled but once, and of which no copy shall be taken by any person, except as hereinafter provided. The person dispensing the same at the time thereof shall indorse on the back of such prescription the name and street and house number of the person to whom dispensed; and the proprietor or manager of the store where dispensed shall keep all such prescriptions in a permanent file separated from all other prescriptions, in his place of business for the period of two years after the same shall have been dispensed, and shall at any time allow the same to be inspected, and copies thereof to be made by any peace officer, the prosecuting attorney of the county where sold, or any authorized inspector of drugs; provided, that nothing herein contained

shall prohibit any manufacturer or licensed druggist from selling or delivering any of the above named to a person known to be a licensed physician, licensed veterinarian, or licensed druggist, nor prohibit a physician from dispensing the same in good faith to his patients, nor prohibit the sale of patent or proprietary or medicinal preparations containing opium or morphine, in combination or compound with other active elements where the dose of opium is less than one-quarter grain, or morphine not more one-twentieth grain, or codeine not more than one-quarter grain, of heroin not more than one-twelfth grain.

Section 2. It shall be unlawful for any physician to sell or give to or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine, or codeine or heroin, or any derivative, mixture or preparation of any of them, except to a patient believed in good faith to require the same for medical use, and in quantities proportioned to the needs of such patients.

Section 3. Any person found guilty of the violation of this act shall be punished for each separate offense (and each and every individual case shall constitute a separate offense), by a fine of not less than fifty (\$50) dollars, nor more than five hundred (\$500) dollars, or by imprisonment in the county jail for a period of not less than sixty days nor more than one hundred days, or by both such fine and imprisonment.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

REGULATION OF COMMISSION MERCHANTS.

Chapter 2, Laws 1909, page 3.

"An act relative to commission merchants or persons selling agricultural or horticultural products, or farm produce on commission."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Any person or persons doing business in this state as commission merchants, or who shall receive from any person of this state, agricultural or horticultural products or farm produce raised in this state to sell on commission, shall immediately, upon receipt of such goods, send to the consignor or consignors a statement in writing showing what property has been received.

Section 2. Whenever any commission merchant or person receiving any property as mentioned in section 1, of this act, shall sell the same or twenty-five per centum thereof, such commission merchant or person shall immediately render a true statement to the consignor, showing what portion of such consignment has been sold, to whom sold and the price received therefor.

Section 3. Any person engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of this act, or who shall make a false report or statement of the matters herein required, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Section 4. This act shall take effect and be in force from and after its passage and approval.

Approved February 4, 1909.

INVESTMENT COMMISSIONER.

Chapter 85, Laws 1913, page 367.

"An act creating the office of investment commissioner, and giving such official certain powers in relation to investment companies and stock brokers for the protection of investors, including the power to license the sale by such companies and stock brokers to the public of securities; defining investment companies, and regulating or providing for the regulation of the promotion, organization and operation thereof; providing for the inspection and investigation of property, books, papers, business, methods and affairs of any investment company whose securities shall be offered for sale to the public; defining stock brokers and providing for the regulation of their business as such; and providing penalties for the violation of this act."

Be it enacted by the Legislative Assembly of the State of Montana:

"Investment Company" Defined—Persons and Institutions Exempt from Law.

Section 1. The name "investment company" as used in this act shall include:

(1.) Every corporation, company, copartnership or association whether incorporated or unincorporated except as otherwise provided in this act which shall hereafter engage in the business of selling or repairing or negotiating for the sale of, or of taking subscriptions for any stock, bonds or other securities of any kind or character issued by any other corporation, company, copartnership or association (other than bonds of the United States, state, county or municipal bonds or warrants, stock of state or national banks located in the state of Montana, building and loan associations, corporations not organized for profit, by notes secured by mortgages for real estate located in the state of Montana), to any person or persons in the state of Montana.

(2.) Every corporation, company, copartnership or association which shall outside of the county in which such land is located sell, offer or negotiate for the sale of any contracts for deed, bonds for deed or other papers by whatsoever names such instruments may be designated, not originally issued by such corporation, company, copartnership or association, providing that when certain payments are made or certain conditions fulfilled a deed or title will be delivered to certain parts or parcels of land.

(3.) This act shall not apply to any person, bank, corporation, copartnership or association of Montana selling stock or securities actually owned by said person, corporation, copartnership or association, provided that they shall not be engaged in the brokerage business of buying and selling stocks for securities nor shall this be so construed so as to prevent any corporation either foreign or domestic from selling its own stock, bonds or securities through an officer or agent of such corporation providing that two-thirds or more of the assets of said corporations shall consist of property situated within the state of Montana.

"Stock Broker" Defined.

Section 2. The name "stock broker" as used in this act shall include every person, set of persons, associations, companies, copartnership or corporation, who shall, in the state of Montana, engage in the business of deal-

ing in stocks, bonds or other securities covered by this act, selling or offering or negotiating for the sale thereof, or underwriting or purchasing such securities and reselling them to any person or persons, at a commission or profit.

Words "Domestic" and "Foreign" Defined.

Section 3. The name "domestic" as used in this act shall apply to those investment companies or stock brokers incorporated under the laws of Montana or having their principal office in the state of Montana, and the word "foreign" shall apply to those incorporated under the laws of another state, or foreign country or having their principal office outside of the state of Montana.

Word "Agent" Defined.

Section 4. The name "agent" as used in this act shall include any person who shall act for any investment company or stock broker in offering for sale, taking subscriptions for or negotiating for the sale, or selling any securities for any investment company or stock broker, either as an employee on a salary basis or for a commission.

Investment Companies and Stock Brokers must have Permit.

Section 5. It shall be unlawful for any investment company or stock broker, or any representative thereof, to sell, offer for sale, take subscriptions for or negotiate for the sale in any manner whatsoever, of any stocks, bonds or other securities of any kind or character, other than those exempted from the provisions hereof by the definitions herein provided, without a permit from the state investment commissioner as hereinafter provided.

Application for Permit by Investment Companies.

Section 6. Before securing such permit it shall be necessary for each and every investment company to file in the office of the investment commissioner, together with a filing fee of twenty-five (\$25) dollars, the following papers, documents, etc., together with such other information and documents as said investment commissioner shall deem necessary in each case, to wit:

1. An itemized statement of its actual financial condition and the amount of its properties and liabilities.
2. A copy of all contracts, bonds or other securities which it proposes to make with or sell to its contributors.
3. Sample copies of all literature or advertising matter used or to be used by such investment company.
4. A copy of its Constitution and by-laws, or articles of copartnership or association.
5. If it shall be an incorporated investment company, it shall also file a copy of its charter, and if it be a foreign investment company, such copy shall bear the certificate of the Secretary of State, or other state officer having custody of such records, that it is a true, complete and correct copy.

Verification of Application and Papers.

Section 7. All of the above-described papers shall be verified by the oath of a duly authorized member of a copartnership or association, if it be a copartnership or association, and by the oath of the president and secretary, if it be incorporated, provided that the investment commissioner

shall have the power to require such officers to make affidavit to such other reports or information as he may call for.

Foreign Investment Companies to File Written Consent to Service of Process.

Section 8. Every foreign investment company shall also file its written consent, in such form as may be approved by the investment commissioner, that actions may be commenced against it, in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside, by the service of process on the investment commissioner, agreeing that such service of process on the investment commissioner shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the company itself according to the laws of this or any other state, and such written consent for service of process shall be irrevocable. Such written consent shall be accompanied by a certified copy of an order or resolution of the board of directors, trustees, owners or managers of such investment company authorizing the execution of same. When a case shall be brought, the summons shall be directed to the investment commissioner, and shall require the defendant to answer by a certain day, not less than forty days nor more than sixty days from the date thereof. Said summons shall be forthwith forwarded by the clerk of the court to the investment commissioner, who shall immediately forward a copy thereof to the secretary of the corporation sued, by registered mail, and thereupon the investment commissioner shall make return of said summons to the court whence it issued, showing the date of its receipt by him, the date of forwarding such copy, the name and address of the person to whom he forwarded said copy, and the costs of service and return thereof, which in each case shall be two (\$2.50) dollars and fifty cents. Such return shall be under his hand and seal of office, and shall have the same force and effect as a due and sufficient return made by the sheriff on process directed to him. The investment commissioner shall keep a suitable record book, in which he shall docket each action commenced against a foreign investment company as aforesaid. This record shall show the court in which the suit is brought, the title of case, the time when commenced, the date and manner of service, and the date of payment of fee taxed as costs in the case.

Examination of Application by Commissioner and Issuance of Statement.

Section 9. It shall be the duty of the investment commissioner to examine the statements and documents so filed, and if said investment commissioner shall deem it advisable, he shall make or have made a detailed examination, audit an investigation of such investment company's affairs, providing that such investment company may at its option, in writing, refuse to have such investigation made, in which event said investment commissioner shall reject its application. If he finds that such investment company is solvent, that its article of incorporation or association, its Constitution and by-laws, its proposed plan of business and proposed contracts contain and provide for a fair, just and equitable plan for the transaction of business, and in his judgment promises a fair return on the stocks, bonds, or other securities by it offered for sale, the investment commissioner shall issue to such investment company a statement, entitling it to sell such securities in the state of Montana, and reciting that such company has complied with the provisions of this act, that detailed information in regard

to the company and its securities is on file in the investment commissioner's office, that such investment company is permitted to do business in this state; and such statement shall also recite in bold type that the investment commissioner in no wise recommends the securities to be offered for sale by such investment company. Such permit, however, shall be subject to revocation at any time by the investment commissioner for cause to him sufficient. But if said investment commissioner finds that such articles of incorporation or association, charter, Constitution and by-laws, plan of business or proposed contract contains any proviso that is unfair, unjust, inequitable or oppressive to any class of contributors, or if he decides from his investigation or examination of its affairs that said investment company is not solvent, or does not intend to do a fair and honest business, or in his judgment does not promise a fair return on the stocks, bonds or other securities by it offered for sale, then he shall not grant such company a permit as herein provided and shall notify said company in writing of his decision.

Stock Brokers—Issuance of Permit to Do Business.

Section 10. The foregoing 6, 7, 8, and 9 shall apply to stock brokers, providing that stock brokers shall not be required to file a copy of each stock, bond or other security it shall handle, and that said investment commissioner shall make special investigation and ascertain the reputation of such stock broker, especially as to the class of stocks, bonds and other securities handled by such broker, and that the granting of a permit to such stock broker shall be further contingent upon such stock broker having the reputation of handling such stocks, bonds and other securities as said investment commissioner shall decide to be good legitimate investment. Such permit shall entitle such stock broker to handle such stocks, bonds and other securities in the state of Montana as are not objected to by the investment commissioner, providing that such stock broker shall file on the first day of each month a list of the stocks, bonds and other securities on bond for sale, and handled by it during the preceding month; and providing further, that said investment commissioner shall have authority to prohibit said stock broker from handling any of such issues at any time, or to cancel said broker's permit at any time he decides that said broker is not handling such securities as he deems good legitimate investments.

Appeals from Investment Commissioner to State Board of Examiners.

Section 11. An appeal may be taken from the decision of the investment commissioner refusing to grant a license to any investment company or stock broker, to the State Board of Examiners of this state. Such appeal shall be taken by filing with said State Board of Examiners an application for hearing on its case. When such hearing is set, it shall be the duty of the investment commissioner to produce for the inspection and consideration of the State Board of Examiners all papers regarding such company on file in his office and other information, and such State Board of Examiners shall have authority to call for any additional information it may desire under oath from the company or stock broker under consideration. If said State Board of Examiners shall reverse the decision of the investment commissioner, it shall so notify him in writing, and it shall then become the duty of the investment commissioner to forthwith issue said applicant a permit.

Amendment of Charter or By-laws of Company—Restrictions upon Investment Companies.

Section 12. No amendment of the charter, articles of incorporation, Constitution or by-laws of any such investment company, shall become operative until a copy of the same has been filed with the investment commissioner as provided in regard to the original filing in section 6 of this act, nor shall it be lawful for such investment company to transact business on any other plan than that set forth in its application, or to make any contracts other than that shown in copy of proposed contract required under section 6 of this act, until a written statement showing in full detail the proposed new contract shall have been filed with the investment commissioner, in like manner as provided in regard to the original plan of business and proposed contract, and the consent of the investment commissioner obtained as to making such proposed new plan of business or contract.

Registration of Agents of Investment Companies—Permits to Do Business.

Section 13. Any investment company or stock broker may appoint one or more agents, but no such agent shall do any business as provided in this act for said investment company or stock broker in this state until he shall be registered with the investment commissioner as an agent of such investment company or stock broker, and for each of such registrations there shall be paid to the investment commissioner the sum of one (\$1) dollar, and said investment commissioner shall issue to each agent so registered an individual permit, entitling him to represent such investment company or stock broker in the state of Montana as its agent until the 1st day of March following, when it shall be necessary to re-register such agent. Such permit, however, shall be subject to revocation at any time by the investment commissioner for cause appearing to him sufficient.

Statements to be Filed by Investment Companies and Stock Brokers.

Section 14. Every investment company or stock broker licensed under this act shall file at the close of business December 31st, of each year, and such other times as required by the investment commissioner, a statement setting forth, in such form as may be prescribed by said investment commissioner, its financial condition, amount of its properties and liabilities, and such other information concerning its affairs as said investment commissioner may require. Each such statement shall be accompanied by a filing fee of two (\$2.50) dollars and fifty cents. Any investment company or stock broker failing to file its report as herein provided within ten days of the dates herein specified, or failing to file any special report within thirty days after receipt of request from the investment commissioner therefor, shall forfeit its right to do business in this state by reason thereof.

Books, Accounts and Records of Investment Companies.

Section 15. The general accounts of every investment company, domestic or foreign, doing business in this state, shall be kept in such manner and form as may be prescribed by the investment commissioner and all books, papers, business, methods, and affairs of such investment company shall be at all times subject to inspection and investigation by said investment commissioner or any person thereto by said commissioner authorized and designated for the purpose of enforcing the provisions of this act. The investment commissioner shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and production of evi-

dence by subpoena, attachment and punishment, which said power shall extend throughout the state; said commissioner shall have power to take testimony under deposition either within or without the state.

Supervision and Examinations by Investment Commissioner—Costs and Fees.

Section 16. The investment commissioner shall have general supervision and control, as provided by this act, over any and all investment companies and stock brokers, domestic or foreign, licensed under this act, and all such investment companies or stock brokers shall be subject to examination by the investment commissioner or his duly authorized agents, or deputies, at any time the investment commissioner may deem it advisable and in the same manner as is now provided for the examination of state banks. The rights, powers, and privileges of the investment commissioner in connection with such examination shall be the same as is now provided with reference to the examination of state banks. Such investment company or stock broker shall pay a fee for each examination made by said investment commissioner, or his deputies or agents, of not to exceed ten (\$10) dollars for each day or fraction thereof plus the actual traveling and hotel expenses of said commissioner, or his agent or deputy, that he is absent from the capitol building for the purpose of making such examination, and the failure or refusal of any investment company or stock broker to pay such fees upon the demand of the investment commissioner, or his deputy or agent, while making such examination, shall work a forfeiture of his or its right to do business in this state.

Circulars and Advertisements of Brokers and Companies.

Section 17. It shall be unlawful for any investment company or stock broker or his or its agent to issue, circulate or deliver any advertisement, pamphlet, circular or other document in regard to his or its stocks, bonds or other securities in the state of Montana until after such investment company or stock broker shall have been licensed to sell his or its securities in the state of Montana as provided in this act, and it shall be unlawful for any such licensed investment company or stock broker or his or its agent to issue, circulate or deliver any such advertisement, pamphlet, circular or other document, unless the same shall be signed and bear a serial number and a copy thereof first filed with the investment commissioner and the approval of the investment commissioner obtained thereto, nor shall it be lawful for such investment company or stock broker or his or its agent to issue, circulate or deliver such advertisement, etc., after he or it has been notified of objection thereto by said investment commissioner.

Revocation of Permits—Appointment of Receiver.

Section 18. Whenever it shall appear to the investment commissioner that the assets of any investment company doing business in this state are impaired to the extent that such assets do not equal its liabilities, or that it is conducting its business in an unsafe, inequitable or unauthorized manner, or is jeopardizing the interests of its stockholders or the investors in stocks, bonds or other securities by it offered for sale, or whenever any investment company shall refuse to file any papers, statements or documents required under this act, or shall refuse to permit an examination by said investment commissioner, or his deputies or agents, as provided in this act, without giving satisfactory reasons therefor, said investment com-

missioner shall at once cancel its permit, and if he shall deem advisable, shall communicate such facts to the Attorney General, who shall thereupon at once make an investigation, and if the facts as presented to him by the investment commissioner are substantiated, he shall thereupon apply to a court of competent jurisdiction for the appointment of a receiver to take charge of and conclude the business and affairs of such investment company, and if such fact or facts be made to appear it shall be sufficient evidence to authorize the appointment of a receiver and the making of such orders and decrees in such cases as equity may require.

Records of Commissioner Opened to Inspection.

Section 19. All papers, documents and other instruments filed with said investment commissioner under this act shall be subject to inspection of anyone affected by this act upon application therefor, except that the investment commissioner may, in his discretion, withhold any information relating to the affairs of any investment company or stock broker that, in his judgment, is not required for the best interests of its stockholders and the public welfare.

Manner of Sale or Distribution of Stocks, Bonds or Securities.

Section 20. It shall be unlawful for any investment company, after it has been granted a permit under the provisions of this act, to issue, sell or distribute any stocks, bonds or other securities for promotion or for any other causes, or on any other conditions than those set forth in its applications, without first securing the approval of the investment commissioner therefor. Neither shall it be lawful for any investment company, after it has been granted a permit under the provisions of this act, to pay any dividends in stocks, bonds or other securities without the approval of the investment commissioner.

False Entries or Statements by Brokers or Investment Companies.

Section 21. Any person who shall knowingly or willfully subscribe to, or make or cause to be made, any false statements or false entry in any book of such investment company or stock broker, or exhibit any false paper with the intention of deceiving any person authorized to examine into its affairs, or who shall make or publish any false or misleading statements of its financial condition or of the stocks, bonds, or other securities by it offered for sale, shall be deemed guilty of a felony, and upon conviction thereof, shall be fined not less than two hundred (\$200) dollars nor more than ten thousand (\$10,000) dollars, and shall be imprisoned for not less than one year nor more than ten years in the State Penitentiary.

Violation of This Act a Felony.

Section 22. Any person or persons, agent or agents, investment company or stock broker who shall violate any of the provisions of this act shall be deemed guilty of a felony, and upon conviction thereof shall be fined for each offense not less than one hundred (\$100) dollars nor more than ten thousand (\$10,000) dollars, or by imprisonments in the State Penitentiary for not less than ninety days nor more than one year, or by both such fine and imprisonment.

Collection and Disposition of Fees—Clerks and Deputies.

Section 23. All fees herein provided for shall be collected by the investment commissioner and by him shall be turned into the state treas-

ury, and all fees so turned into the state treasury are hereby reappropriated to the investment commissioner for the purpose of paying all salaries and expenses necessary for the proper carrying this act into effect; and the investment commissioner is hereby authorized to appoint such clerks, deputies and agent as are actually and absolutely necessary to carry this act into full force and effect, none of whom shall be related by blood or marriage to such investment commissioner or any of his deputies, or agents. All money actually and necessarily paid out by the investment commissioner or any clerk or deputy or agent, appointed under this act, as salaries, or any money actually and necessarily paid out by the investment commissioner, or by any clerk or deputy or agent appointed under this act, for traveling or incidental expenses shall be paid by the State Treasurer out of such fees upon the state auditor's warrants, to be issued upon sworn vouchers containing an itemized account of such salaries or expenses.

State Auditor Ex-officio Investment Commissioner.

Section 24. The office of investment commissioner is hereby created and the State Auditor of Montana is hereby made and constituted ex-officio investment commissioner.

Effect of Invalidity of Part of Act.

Section 25. Should the courts declare any section of this act unconstitutional or unauthorized by law or in conflict with any other section or provision of this act, then such decision shall affect only the section or provision so declared to be unconstitutional or void and shall not affect any other section or part of this act.

Existing Brokers and Companies Exempt from Act.

Section 26. No investment company or stock broker as defined in this act, now organized, or in process of organization in this state, shall be compelled to comply with the provisions of this act until January 1, 1914.

Section 27. All acts and parts of acts in conflict herewith are hereby repealed, in so far as they conflict with this act.

Section 28. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved March 13, 1913.

LIBRARY EXTENSION—COUNTY LIBRARIES.

Chapter 45, Laws 1915, page 64.

"An act to provide for library extension through the establishment and maintenance of county free libraries."

Be it enacted by the Legislative Assembly of the State of Montana:

Proceedings to Establish County Library.

Section 1. Upon petition signed by not less than twenty per cent of the qualified voters of a county, at least one-half of whom shall reside outside of the county seat, being filed with the Board of County Commissioners, requesting the establishment of a county free library, the county commissioners of any county may at their option and in their discretion, by resolution, duly adopt and make part of the records of such board, establish at the county seat a county free library, as provided in this act. At least

once a week for four successive weeks prior to taking such action, the Board of County Commissioners shall publish, in a newspaper of general circulation in such county, notice of such contemplated action, giving therein the date and place of the meeting for a public hearing at which such action is proposed to be taken.

Withdrawal of Incorporated City.

Section 2. After the establishment of a county free library as provided in this act, the board of trustees, common council, or other legislative body of any incorporated city or town in the county may withdraw such incorporated city or town from the operation of this act, by notifying the Board of County Commissioners that such city or town no longer desires to be a part of the county free library system, and thereafter the residents of such city or town shall cease to participate in the benefits of such county free library, and the property situated in such city or town shall not be liable to taxes for county free library purposes; provided, that public notice of such contemplated action by the board of trustees, common council, or other legislative body of any incorporated city or town desiring to withdraw such incorporated city or town from the operation of this act, shall be given by publication in some newspaper of general circulation, in such city or town, for at least once a week for four successive weeks prior to taking such action, giving therein the date and place of the meeting at which such contemplated action is proposed to be taken.

Appointment and Qualification of Librarian.

Section 3. Upon the establishment of a county free library the Board of County Commissioners may appoint a county librarian, who may be removed for or without cause. Any person who is a graduate of a library school, or has had one year's practical experience in library work, shall be eligible to the office of county librarian.

County Commissioners to Supervise and Make Rules—Branches and Stations—Employees and Apprentices.

Section 4. The county free library shall be under the general supervision of the Board of County Commissioners, who shall have the power to make general rules and regulations regarding the policy of the county free library, and to establish branches and stations throughout the county, and may locate said branches and stations wherever deemed advisable; to determine the number and kind of employees of such library, and to appoint and dismiss such employees. All employees of the county free library whose duties require special training in library work, shall be graded in grades to be established by the county librarian, according to the duties required of them. Before appointment to a position in the graded service, the candidate must pass an examination appropriate to the position sought, satisfactory to the county librarian and county commissioners, and show a satisfactory experience in library work; provided, that the county librarian may also accept as apprentices, without compensation, candidates possessing personal qualifications satisfactory to the librarian, and the Board of County Commissioners may dismiss such apprentices at any time if in its judgment the work is not satisfactory.

Oath, Duties and Compensation of Librarian.

Section 5. The county librarian shall, prior to the entering upon the duties of her office, file with the county clerk the usual oath of office and be

required to file bond for such sum as the Board of County Commissioners may determine. The county librarian shall, subject to the general rules adopted by the Board of County Commissioners, build up and manage, according to the accepted principles of library management, a library for the use of the people of the county, and shall, subject to approval by the Board of County Commissioners, determine what books and other library equipment shall be purchased. The library building shall be under the general supervision and care of the county librarian. The county librarian shall be allowed actual and necessary traveling expenses incurred in the business of the office, and such other compensation as the Board of County Commissioners may fix. The Boards of County Commissioners of the several counties of the state are hereby authorized to audit and allow such traveling expenses and other compensation of the county librarian of the respective counties, quarterly; and the same shall be paid out of the county free library fund.

Library Tax—Bonds for Building—Gifts and Bequests—Funds and Claims.

Section 6. The Board of County Commissioners, after a county free library has been established, may annually levy, in the same manner and at the same time as other county taxes are levied, a special tax not to exceed one mill on the dollar upon all property in such county, for the purpose of maintaining the county free library. County bonds may be issued in the manner prescribed in sections 2905–2907 of the Revised Codes of 1907, of Montana, for the erection and equipment of county free library buildings and the purchase of land therefor. The Board of County Commissioners is authorized to receive on behalf of the county any gift, bequest, or devise for the county free library or for any branch or subdivision thereof. The title to all property belonging to the county free library shall be vested in the county. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds of the county free library, whether derived from taxation or otherwise, shall be in the custody of the county treasurer. They shall constitute a separate fund, called the county free library fund, and shall not be used for any purposes except those of the county free library. Each claim against the county free library fund shall be authorized and approved by the county librarian, or in his absence from the county, by his assistant. It shall then be acted upon in the same manner as are all other claims against the county.

Acceptance of Property of School Libraries.

Section 7. The Board of County Commissioners shall have power to accept on behalf of the county free library, all books and other property of school libraries as provided by sections 1200–1205 of chapter 12 of the Session Laws of 1913, of the state of Montana, and to manage and maintain the same as a part of the county free library.

School Libraries as Branches of County Library.

Section 8. Whenever the county in which a school district library is situated shall maintain a county free library, the Board of School Trustees or City Board of Education may agree with the proper authorities of such county to make the school district library a branch of such county library. In this event this Board of School Trustees or city Board of Education shall turn over the books to the county free library, and shall annually transfer

to such county free library its library fund, as soon as it is available, to be kept and expended as other funds of such county library. The said county free library shall thereupon have such district library managed and maintained according to the rules and regulations established by the authorities of the county free library.

Funds of District Library Turned Over to County Library.

Section 9. Whenever a school district library shall have become a branch library, as provided in section 8 of this act, the county or city Superintendent of Schools may draw a warrant for the whole amount of the district library fund, payable to the proper authorities of the county free library, upon the filing with him of a copy of the resolution of the Board of Trustees of the district or the city Board of Education, embodying the agreement made with such county free library, which copy shall be duly certified as correct by the clerk and recorder of the county, or other proper officer.

Disestablishment of Library.

Section 10. After a county free library has been established it may, upon petition signed by not less than ten per cent of the qualified voters of a county requesting its disestablishment being filed with the Board of County Commissioners, be disestablished in the same manner as it was established. At least once a week for four successive weeks prior to taking such action, the Board of County Commissioners shall publish, in a newspaper designated by them and published in the county, notice of such contemplated action, giving therein the date and place of meeting for a public hearing at which contemplated action is proposed to be taken; provided, that an interval of three months shall elapse between such action and the disestablishment.

How Libraries of City or Town may Assume Functions of County Library.

Section 11. Instead of establishing a separate county free library, the Board of County Commissioners may enter into a contract with the Board of Library Trustees, or other authority in charge of the free public library of any incorporated city or town, and the Board of Library Trustees, or other authority in charge of such free public library, is hereby authorized to make such a contract. Such contract may provide that the free public library of such incorporated city or town shall assume the functions of a county free library within the county with which such contract is made, and the Board of County Commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city or town such sum as may be agreed upon. Either party to such contract may terminate the same by giving six months' notice of intention to do so.

Claims Against Library and Their Approval.

Section 12. Each claim against the county free library fund, as provided by this act, or against any "City or Town Library Fund," as provided for in section 3488 of the Revised Codes of 1907, must be authorized and approved by the Board of County Commissioners or by the Board of Trustees of the city library, as the case may be.

Repeal of Conflicting Acts.

Section 13. All acts or parts of acts in conflict herewith are hereby repealed.

WORKMEN'S COMPENSATION ACT.

Chapter 96, Laws 1915, page 168.

"An act providing for the protection and safety of workmen in all places of employment and for the inspection and regulation of places of employment in all inherently hazardous works and occupations; providing a schedule of compensation for injury to or death of workmen and methods of paying the same, and prescribing the liability of employers who do not elect to pay such compensation; establishing the industrial accident board, defining its powers and duties; and providing for a review of its awards."

Be it enacted by the Legislative Assembly of the State of Montana:

PART I.

GENERAL PROVISIONS.

Name of Act—What Each Part to Contain.

Section 1. (a) This act shall be known and may be cited as the Workmen's Compensation Act. Part I shall contain those sections which have a general application to the whole of the act and may be referred to as the "General Provisions"; Part II shall contain those sections which refer to Compensation Plan No. 1; Part III shall contain those sections which refer to Compensation Plan No. 2; Part IV shall contain those sections which refer to Compensation Plan No. 3; Part V shall contain those sections which may be referred to as the "Safety Provisions."

References to Plan Numbers.

Section 1. (b) Whenever Compensation Plans Nos. 1, 2, or 3, or the safety provisions of this act shall be referred to, such reference shall also be held to include all other sections which are applicable to the subject matter of such reference.

References to "Compensation Provisions."

Section 1. (c) The "Compensation Provisions" of this act, whenever referred to, shall be held to include the provisions of Compensation Plans Nos. 1, 2, or 3, and all other sections of this act applicable to the same, or any part thereof.

Industrial Accident Board—Term of Office—Salary—Treasurer—Vacancies.

Section 2. (a) There is hereby created a board to consist of three members; the Commissioner of Labor and Industry shall be one member, the State Auditor shall be one member, and one member shall be appointed by the Governor, which board shall be known as the Industrial Accident Board, and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be for four years and until his successor shall have been appointed and qualified. He shall receive an annual salary of four thousand dollars, payable monthly, and shall be the chairman of the board. The board shall elect one of their number as treasurer of the board.

Removal of Appointive Member.

Section 2. (b) A vacancy in the office of the appointed member of the board shall be filled in the same manner as the original appointment, but

shall only be for the unexpired term of such vacancy. The appointed member shall not be removed except for cause, and after a hearing had before and a finding, made by the remaining members of the board, and both of the remaining members of the board must concur in the removal of the appointed member.

Official Bonds.

Section 2. (c) Each member shall, upon entering upon the duties of his office, execute to the state of Montana and file with the Secretary of State a bond in the sum herein prescribed, executed by not less than four responsible sureties or by some surety company authorized to become sole surety on bonds in the state of Montana, such bond to be approved by the Governor, and conditioned that he will faithfully and impartially discharge the duties of his office. Such bonds shall be in addition to any other bonds required by law to be furnished.

Treasurer's Bond—Bond of Other Members.

Section 2. (d) The bond of the treasurer of the board shall be in a sum to be fixed by the Governor, not less than twenty-five thousand dollars (\$25,000), nor more than one hundred thousand dollars (\$100,000). The bonds of the members of board other than the treasurer shall be in the sum of ten thousand dollars (\$10,000).

Compensation to Ex-officio Members.

Section 2. (e) Neither the Commissioner of Labor and Industry, nor the State Auditor, shall receive any additional compensation for the duties imposed upon them by this act.

Quorum—Powers in Case of Vacancy—Hearings—Findings and Orders.

Section 2. (f) A majority of the board shall constitute a quorum for the transaction of any business. A vacancy on the board shall not impair the right of the remaining members to perform all of the duties and exercise all the powers and authority of the board. The act of the majority of the board when in session as a board shall be deemed to be the act of the board, but any investigation, inquiry, or hearing which the board has power to undertake or to hold, may be undertaken or held by, or before, any member thereof, or any examiner, or referee appointed by the board for that purpose. Every finding, order, decision, or award made by any commissioner, examiner, or referee pursuant to such investigation, inquiry or hearing, when approved and confirmed by the board and ordered filed in its office shall be deemed to be the finding, order, decision, or award of the board.

Seal of Board.

Section 2. (g) The board shall have a seal bearing the following inscription: "Industrial Accident Board, State of Montana, Seal." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the board shall direct. All courts shall take judicial notice of said seal.

Office and Furnishings—Temporary Quarters.

Section 2. (h) The board shall keep its principal office in the capital of the state and shall be provided with suitable rooms, necessary office furniture, stationery, and other supplies. For the purpose of holding sessions in other places the board shall have power to rent temporary quarters.

Secretary—Appointment, Term, Duties—Records.

Section 2. (i) The board shall appoint a secretary who shall hold office at the pleasure of the board. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the board; to issue all necessary processes, writs, warrants, and notices which the board is required or authorized to issue, and generally to perform such other duties as the board may prescribe.

Other Assistants and Employees.

Section 2. (j) The board shall employ such assistants and other employees as it may deem necessary to carry out the provisions of this act.

Compensation of Officers and Employees—Terms of Office and Duties.

Section 2. (k) All officers and employees of the board shall receive such compensation for their services as may be fixed by the board, shall hold office at the pleasure of the board, shall perform such duties as are imposed on them by law or by the board.

Salaries Monthly—Approval and Auditing.

Section 2. (l) The salaries of members of the board, secretary and every other person holding office or employment under the board, as fixed by law or by the board, shall be paid monthly after being approved by the board upon claims therefor to be audited and approved by the State Board of Examiners.

Expenses to be Paid from What Fund.

Section 2. (m) All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees incurred while on business of the board, either within or without the state, shall, unless otherwise provided in this act, be paid from the Industrial Administration Fund, after being approved by the board upon claims therefor to be audited and approved by the State Board of Examiners.

Blank Forms, Minutes and Records.

Section 2. (n) The board shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards made by the board, and such other books, or records as it shall deem requisite for the purpose and efficient administration of this act. All such records are to be kept in the office of the board.

Reports and Bulletins Which may be Published.

Section 2. (o) The board shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its annual report, such further reports, and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

Fees.

Section 2. (p) The board shall have power and authority to charge and collect the following fees:

Copies of Papers and Records.

1. For copies of papers and records not required to be certified or otherwise authenticated by the board, 15 cents for each folio; for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, 20 cents for each folio.

Charges for Publications.

2. To fix and collect reasonable charges for publications issued under its authority.

Fees to be Paid into What Fund.

3. The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the Industrial Administration Fund, and shall be accompanied by a detailed statement thereof.

Attorney General Legal Adviser of Board.

Section 2. (q) The Attorney General shall be the legal adviser of the board and shall represent it in all proceedings whenever so requested by the board or any member thereof.

Defenses Excluded in Personal Injury Action—Negligence of Employee—Fellow-servant—Assumption of Risk.

Section 3. (a) In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defense; (1) That the employee was negligent, unless such negligence was willful; (2) That the injury was caused by the negligence of a fellow-employee; (3) That the employee had assumed the risks inherent in, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools, or appliances.

Provisions not to Apply to Domestic Servants, Farm Laborers, etc.

Section 3. (b) The provisions of section 3 (a) shall not apply to actions to recover damages for personal injuries sustained by household or domestic servants, farm or other laborers, engaged in agricultural pursuits, or persons whose employment is of a casual nature.

Employers not Liable for Death or Injury Other Than Herein Defined—Employees Who Elect not to Come Under Act.

Section 3. (c) Any employer who elects to pay compensation as provided in this act shall not be subject to the provisions of section 3 (a), nor shall such employer be subject to any other liability whatsoever for the death of, or personal injury to any employee except as in this act provided; and, except as specifically provided in this act, all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common-law rights and remedies for, and on account of such death of, or personal injury to, any such employee are hereby abolished; provided, that section 3 (a) shall not apply to actions brought by an employee who has elected not to come under this act, or by his representatives, for damages for personal injuries, or death, against an employer who has elected to come under this act.

Provisions of Act to be Exclusive in What Cases.

Section 3. (d) Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and such employee of their right to any other method, form, or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action, action at law, suit in equity, or statutory or common-law right, or remedy, or proceeding whatever, for, or on account of, any personal injury to, or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself and in case of death shall bind his personal representative and all persons having any right or claim to compensation for his injury, or death, as well as the employer, and those conducting his business during liquidation, bankruptcy, or insolvency.

Compensation Plan No. 3 Exclusive, etc., When a Public Corporation or Its Contractor is the Employer—Duty of Governing Body of Corporations.

Section 3. (e) Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions and provisions of Compensation Plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this act by any public corporation shall be considered to be ordinary and necessary expenses of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums into the accident or administration fund, as the case may be, at the times and in the manner provided for in this act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriation, ordinance, or otherwise.

Employers Engaged in Hazardous Industries—Election.

Section 3. (f) Every employer engaged in the industries, works, occupations, or employments in this act specified as "hazardous" may on or before the 1st day of July, 1915, if such employer be then engaged in such hazardous industry, work, occupation, or employment, or at any time thereafter, or, if such employer be not so engaged on said date, may on or after thirty days before entering upon such hazardous work, occupation, or employment, or at any time thereafter, elect whether he will be bound by either of the compensation plans mentioned in this act. Such election shall be in the form prescribed by the board, and shall state whether such employer shall be bound by Compensation Plan No. 1, or Compensation Plan No. 2, or Compensation Plan No. 3, and a notice of such election, with the nature thereof, shall be posted in a conspicuous place in the place of business of such employer, and a copy of such notice, together with an affidavit of such posting, shall be filed with the board.

Employee Engaged in Hazardous Occupation Bound by What Plan—Election.

Section 3. (g) Every employee in the industries, works, occupations or employments in this act specified as "hazardous" shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer, unless such employee shall elect not to be bound by any of the compensation provisions of this act and until

such employee shall have made such election. Such election shall be made by written notice in the form prescribed by the board, served upon the employer, and a copy filed with the board, together with the proof of such service.

Presumption When Employer Fails to Make Election — Election Binds Employer Until What Time.

Section 3. (h) If the employer shall fail to make the election herein provided for, at the time, and in the manner herein prescribed, such employer shall be presumed to have elected not to be bound by the provisions of either Compensation Plan No. 1, or Compensation Plan No. 2, or Compensation Plan No. 3 for that fiscal year, unless such employer shall elect to become subject to, or bound by this act in the manner provided for such election in the first instance. After having once elected to be bound by one or the other of the compensation plans provided in this act, such employer shall be bound by such election for said first fiscal year and each succeeding fiscal year, unless such employer shall, not less than thirty or more than sixty days prior to the end of any fiscal year, elect not to be bound by either of such compensation plans, after the expiration of said fiscal year or unless he shall elect to be bound for the succeeding fiscal year by a different compensation plan than the one by which he is then governed. Such election must be made in the manner provided for in reference to the first election of such employer under this act.

Employer Shall Make Election Before Being Bound—Employee Presumed to Have Elected.

Section 3. (i) It is the intention of this act that any employer engaged in hazardous occupations as defined herein shall, before being bound by either of the compensation plans herein provided, elect to be so bound thereby, and that the employee shall be presumed to have elected to be subject to, and bound by, the provisions of the particular plan which may have been adopted by his employer, unless such employee shall affirmatively elect not to be bound by this act.

Election at Any Time.

Section 3. (j) Any employee who has elected not to be bound by the provisions of this act in the manner herein provided, may revoke such election and elect to come thereunder at any time. Any employer who has failed to elect to be bound by either one or the other of the compensation plans herein mentioned, may, at any time during any fiscal year, elect to be bound thereby, which said election shall be made as hereinbefore provided; but whenever any employer or employee shall have elected to come under the provisions hereof, such election, when it shall have been made, shall bind such employer and employee for the rest of the then fiscal year.

Compensation When Employer has not Elected.

Section 3. (k) No compensation shall be paid to any employee, whether such employee has elected to come under this act or not, where his employer has failed to elect, and has failed to come under one or the other of the compensation plans herein provided.

Act Applies to All Inherently Hazardous Occupations as Enumerated.

Section 4. (a) This act is intended to apply to all inherently hazardous works and occupations within this state, and it is the intention to em-

brace all thereof in sections 4 (b), 4 (c), 4 (d), and 4 (e), and the works and occupations enumerated in said sections are hereby declared to be hazardous.

Construction Work.

Section 4. (b) Tunnels, bridges, trestles; subaqueous works, ditches and canals (other than irrigation without blasting), dock excavations, fire-escapes, sewers, house-moving, house-wrecking, iron or steel frame structures or parts of structures, electric light, or power plants, or systems, telegraph or telephone systems; pile-driving, steam railroads, steeples, towers or grain elevators, not metal framed; drydocks, without excavation; jetties, breakwaters, chimneys, marine railways, waterworks or water systems; electric railways, cable railways, street railways, with or without rock work or blasting; erecting fireproof doors or shutters; steam-heating plants; blasting; tanks, water-towers or windmills, not metal framed; shaft-sinking; concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin works; gas works or systems; marble, stone or brick work; roadmaking, with or without blasting; roof work; safe moving; slate work; plumbing work, inside or outside; metal smokestacks or chimneys; excavations not otherwise specified; blast furnaces; street or other grading; advertising signs; ornamental work on buildings; ship or boat building or rigging, with or without scaffolding; carpenter work not otherwise specified; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; marble, mantel, stone or tile setting; metal ceiling work; mill or ship wrighting; painting of buildings or structures; installation of automatic sprinklers; concrete laying in floors, foundations or street paving; asphalt laying; covering steam-pipes or boilers; installation of machinery not otherwise specified; drilling wells, installing electrical apparatus or fire-alarm apparatus in buildings; house-heating or ventilating systems, glass setting; building hothouses; lathing, paper-hanging, plastering, wooden stair building.

Section 4. (c) Operation (including repair work) of logging, cable, electric, street, steam or other railroads; dredges; interurban electric railroads using third-rail systems; electric light or power plants; quarries; telegraph systems; stone-crushers; blast furnaces; smelters; coal mines, gas-works; steamboats; tugs and ferries, mines other than coal; steam-heating or power plants; grain elevators; laundries; waterworks, paper-mills; pulp-mills; garbage and fertilizer works.

Factories Using Power-driving Machinery.

Section 4. (d) Stamping tin metal; bridge work; railroad, car or locomotive making or repairing; cooperage; logging, with or without machinery; sawmills, shingle-mills, staves, veneer, box, lath, packing cases, sash, doors, blinds, barrel, keg, pail, basket, tub, woodenware or wooden fibreware, rolling-mills; making steam shovels or dredges; tanks, water-towers, asphalt; building material not otherwise specified; fertilizer; cement, stone with or without machinery; kindling wood, masts or spars with or without machinery; canneries; metal stamping; creosoting works; excelsior; iron; steel; copper, zinc, brass, or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware, tile, brick, terra-cotta, fire-clay, pottery, earthenware, porcelain ware; peat fuel, brickettes; breweries; bottling works; boiler-works; foundries; machine-shops not otherwise specified; cordage; working in foodstuffs, including

oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified; making jewelry; making soap, tallow, lard, grease, condensed milk; creameries; printing, electrotyping, photo-engraving, engraving and lithographing, sugar factories.

Miscellaneous Work.

Section 4. (e) Operating stockyards, with or without railroad entry; packing-houses; wharf operations; artificial ice and refrigerating or cold storage plants; tanneries; electric systems not otherwise specified; theater stage employees, including moving picture machine operators; fireworks manufacturing, powder-works.

Hazardous Occupations not Enumerated or Hereafter Arising.

Section 5. If there be or arise any hazardous occupation or work other than hereinbefore enumerated, it shall become under this act and its terms, conditions and provisions as fully and completely as if hereinbefore enumerated.

Meaning of Words Employed in Act.

Section 6. Unless the context otherwise required, words and phrases employed in this act shall have the meanings hereinafter defined.

"Factories" Defined.

Section 6. (a) "Factories" means undertakings in which the business of working at commodities is carried on with power driven machinery, whether in manufacture, repair, or change, and shall include the premises, yards, and plant of the concern.

"Workshop" Defined.

Section 6. (b) "Workshop" means any plant, yard, premises, room or place where power driven machinery is employed and manual labor is exercised by way of trade or gain or otherwise in, or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale, or otherwise, any article, or part of article, machinery, or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

"Mill" Defined.

Section 6. (c) "Mill" means any plant, premises, room, or place where machinery is used; any process of machinery, changing, altering or repairing any article or commodity for sale, or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses, and bunkers.

"Mine" Defined.

Section 6. (d) "Mine" means any mine where coal, clay, ore, mineral, gypsum, or rock is dug or mined underground.

"Quarry" Defined.

Section 6. (e) "Quarry" means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, shale, gravel, or rock is cut or taken for manufacturing, building, or construction purposes.

"Engineering Work" Defined.

Section 6. (f) "Engineering work" means any work of construction, improvement, or alteration or repair of buildings, streets, highways, sewers,

street railways, railroads, logging roads, interurban roads, harbors, docks, canals; electric, steam or water-power plants; telegraph and telephone plants and lines; electric light and power lines, and includes any other work for the construction, alteration, or repair of which machinery driven by mechanical power is used.

"Reasonably Safe Place to Work" Defined.

Section 6. (g) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

"Reasonably Safe Tools" Defined.

Section 6. (h) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to, and are reasonably safe for use for the particular purpose for which they are furnished, and shall embrace all safety devices and safeguards provided or prescribed by the "safety provisions" of the act for the purpose of mitigating or preventing a specific danger.

"Employer" Defined.

Section 6. (i) "Employer" means any person, firm, association, or corporation, and includes the state, counties, municipal corporations, cities under special charter and commission form of government, school districts, towns, or villages, and independent contractors, and shall include the legal representatives of a deceased employer.

"Employee" and "Workman" Defined.

Section 6. (j) "Employee" and "Workman" are used synonymously, and means every person in this state, including a contractor other than "an independent contractor," who, after July 1, 1915, is engaged in the employment of an employer carrying on or conducting any of the industries classified in sections 4 (a), 4 (b), 4 (c), 4 (e) and 5 of this act, whether by way of manual labor, or otherwise, or whether upon the premises or at the plant of such employer, or who is engaged in the course of his employment away from the plant of his employer; provided, however,

Injury to Workman Away from Plant and Caused by Nonemployee—Shall Elect Remedy Before Action.

1. If the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or, if death results from such injury, beneficiaries or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such others; such election shall be made in advance of the commencement of the action.

Cause of Action Assigned to State.

2. If he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the Industrial Accident Fund, or the employer or insurer, as the case may be.

Prosecution or Settlement of Assigned Cause.

3. Any such cause of action assigned to the state may be prosecuted, or compromised by the board, in its discretion.

Waiver of Compensation by Suit in Court.

4. If such workman, his beneficiaries, or dependents, as the case may be, shall elect to proceed against the person responsible for the injury, such election shall constitute a waiver of any right to compensation under the provisions of this act.

"Injury" to Include Death.

Section 6. (k) "Injury" means and shall include death resulting from injury.

"Beneficiary" Defined.

Section 6. (l) "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of sixteen years and an invalid child or invalid children over the age of sixteen years, or, if no surviving wife or husband, then the surviving child or children under the age of sixteen years, and any invalid child or children over the age of sixteen years in whom shall vest a right to receive compensation under this act.

"Major Dependent" Defined.

Section 6. (m) "Major dependent" means if there be no beneficiaries as defined in section 6 (l), the father and mother or the survivor of them, if actually dependent to any extent upon the decedent at the time of his injury.

"Minor Dependent" Defined.

Section 6. (n) "Minor dependent" means if there be no beneficiary as defined in section 6 (l), and if there be no major dependent as defined in sections 6 (m), the brothers and sisters, if actually dependent upon the decedent at the time of his injury.

"Invalid" Defined.

Section 6. (o) "Invalid" means one who is physically or mentally incapacitated.

"Child" Defined, to Include Whom.

Section 6. (p) "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

"Injury" or "Injured" Defined.

Section 6. (q) "Injury" or "injured" refers only to an injury resulting from some fortuitous event, as distinguished from the contraction of disease.

The Singular and Plural Include Both.

Section 6. (r) Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

Masculine Includes All Genders.

Section 6. (s) Wherever the masculine gender is used, the feminine and neuter shall be included.

"Physician" to Include "Surgeon."

Section 6. (t) The term "physician" shall include "surgeon" and in either case shall mean one authorized by law to practice his profession in this state.

"Week" Defined.

Section 6. (u) "Week" means six working days, but includes Sundays.

"Wages" Defined.

Section 6. (v) "Wages" means the average daily wages received by the employee at the time of the injury for the usual hours of employment in a day, and overtime is not to be considered.

"Wife" or "Widow" Defined.

Section 6. (w) "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the injury.

"Husband" or "Widower" Defined.

Section 6. (x) "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her injury.

"Board" Defined.

Section 6. (y) "Board" means the Industrial Accident Board of the state of Montana.

"Commissioner" Defined.

Section 6. (z) "Commissioner" means one of the members of the Industrial Accident Board.

"Appointed Member of the Board" Defined.

Section 6. (aa) "Appointed member of the board" means that member of the Industrial Accident Board appointed by the Governor.

"Order" Defined.

Section 6. (bb) "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the board, or any other determination arrived at or decision made by such board, excepting general or local orders as herein specified.

"General Order" Defined.

Section 6. (cc) "General order" shall mean and include such order made under the safety provisions of this act as applies generally throughout the state to all persons, employments or places of employment, or employees working in such places of employment classed as hazardous in this act.

"Local Order" Defined.

Section 6. (dd) "Local order" shall mean and include any ordinance, order, rule, or determination of any public corporation, or any order or direction of any other public official, board, or department upon any matter over which the Industrial Accident Board has jurisdiction.

"Pay-roll" Defined—Estimate to Establish Pay-roll.

Section 6. (ee) "Pay-roll," "annual pay-roll," or "annual pay-roll for the preceding year," means the average annual pay-roll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve times the average monthly pay-roll for the current year, provided that an estimate may be made by the board for any employer starting in business where no

average pay-rolls are available, such estimate to be adjusted by additional payment by the employer or refund by the board, as the case may actually be on December 31st of such current year.

"Year" Defined.

Section 6. (ff) "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the 30th day of the succeeding June.

"Public corporation" Defined.

Section 6. (gg) "Public corporation" means the state, or any county, municipal corporation, school district, city, city under commission form of government or special charter, town or village.

"Insurer" Defined.

Section 6. (hh) "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

"Casual Employment" Defined.

Section 6. (ii) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

"Plant of the Employer" Includes What.

Section 6. (jj) "The plant of the employer" shall include the place of business of a third person while the employer has access to, or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

"Independent Contractor" Defined.

Section 6. (kk) "An independent contractor" is one who renders service in the course of an occupation, representing the will of his employer only as the result of his work and not as to the means by which it is accomplished.

Compensation to Children, Brothers and Sisters and Invalid Children—When Ceases.

Section 7. (a) In computing compensation to children and to brothers and sisters, only those under sixteen years of age, or invalid children over the age of sixteen years, shall be included, and, in the case of invalid children, only during the period in which they are under that disability (within the maximum time limitations elsewhere in this act provided), after which payment on account of such person shall cease. Compensation to children, or brothers or sisters (except invalids) shall cease when such persons reach the age of sixteen years.

When Compensation to Beneficiaries, Major or Minor Dependents or Widow Cease.

Section 7. (b) If any beneficiaries or major or minor dependents of a deceased employee die, or if the widow or widower remarry, the right of such beneficiary or major or minor dependent, or such widow or widower, to compensation under this act shall cease.

Compensation not Paid to Nonresident Major or Minor Dependents.

Section 8. (a) No compensation under this act, except as otherwise provided by treaty, shall be paid to any major or minor dependents not residing within the United States at the time of the injury to the decedent.

Compensation to Beneficiary not Residing in United States.

Section 8. (b) Except as otherwise provided by treaty, no compensation in excess of fifty per centum of the compensation provided in this act, shall be payable to any beneficiary not residing within the United States at the time of the injury to the decedent; provided, however, that no compensation shall be allowed to any nonresident, alien beneficiary who is a citizen of a government having compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in the same degree as herein extended to nonresident beneficiaries.

Compromise With Nonresident.

Section 8. (c) Nothing in section 8 (b) shall prevent the compromise of any sums due a beneficiary not residing in the United States at the time of the injury to the decedent for a sum less than fifty per centum of the compensation provided in this act, upon the approval of the board of such compromise settlement.

No Compensation to Nonresident Beneficiaries Until When.

Section 8. (d) Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this act shall be furnished by such beneficiary duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the board. And such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

Payment to Nonresident Beneficiaries Made to Whom.

Section 9. (a) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, or consul or consular agent within the United States, representing the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary, or consul, or consular agent shall acquit the employer, the insurer, or the board, as the case may be.

Compensation Paid to Parent or Guardian.

Section 9. (b) Where payment is due to a child under sixteen years of age, or to a person adjudged incompetent, the same shall be made to the parent, or to the duly appointed guardian as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or board, as the case may be. In other cases, payment shall be made to the person entitled thereto, or to his duly authorized representative.

Claims must be Presented Within What Time.

Section 10. (a) In case of personal injury or death, all claims shall be forever barred unless presented within six months from the date of the happening of the accident.

Time Limitation shall not Run Against Whom—Guardian.

Section 10. (b) No limitations of time, as provided in this act, shall run as against any injured workman who is mentally incompetent and without a guardian, or an injured minor under sixteen years of age who

may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitation, as provided in section 10 (a), shall begin to run on the date of the appointment of such guardian, or when such minor arrives at the age of sixteen years.

Employer Liable When Lets Work to Other Than Independent Contractor.

Section 11. (a) Where any employer procures any work to be done, wholly or in part for him, by a contractor other than an independent contractor, and the work so procured to be done is a part or process in the trade or business of such employer, then such employer shall be liable to pay all compensation under this act to the same extent as if the work were done without the intervention of such contractor. And the work so procured to be done shall not be construed to be "casual employment."

Presumption When Employer Lets Work by Contract.

Section 11. (b) Where any employer procures work to be done as specified in section 11 (a), such contractor and his employees shall be presumed to have elected to come under that plan of compensation adopted by the employer, unless they shall have otherwise elected, as provided herein.

When Contractor Performing Casual Employment Becomes the Employer.

Section 11. (c) Where any employer procures any work to be done, wholly or in part for him, by a contractor, where the work so procured to be done is casual employment as to such employer, then such contractor shall become the employer for the purposes of this act.

Work to be Paid for in Property Other Than Money—Wages.

Section 11. (d) Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the board in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed; provided, however, that where an employer procures any work to be done by any contractor, or through him by a subcontractor, the payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, then and in that event, the employer shall not be liable for compensation but such liability shall fall upon the contractor or subcontractor as the case may be.

Compensation When Injury Proximate Cause of Death.

Section 12. (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary, or the major or minor dependents of the deceased, as the case may be, shall receive the same compensation as though the death occurred immediately, following the injury, but the period during which the death benefit shall be paid shall be reduced by the period during, or for which compensation was paid for the injury.

When Employee Dies from Cause Other Than Injury.

Section 12. (b) If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

Who Constitutes Beneficiary or Major or Minor Dependent—Date.

Section 12. (c) The question as to who constitutes a beneficiary, or a major or minor dependent, shall be determined as of the date of the hap-

pening of the accident to the employee, whether death shall immediately result therefrom or not.

When Employee Shall Submit to Examinations by Physician.

Section 13. (a) Whenever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time, to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination, from time to time, by any physician selected by the board, or any member or examiner, or referee thereof.

Requests or Orders for Examination—Physician may Testify.

Section 13. (b) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employee, after such written request shall fail or refuse to submit to such examination, or shall, in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the board, who shall make or be present at any such examination may be required to testify as to the results thereof.

Provisions of Section 16 (f) Waived.

Section 14. (a) Nothing in this act shall be construed as preventing employers and workmen from waiving the provisions of section 16 (f) of this act, and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employee.

Hospital Contracts Shall Provide What.

Section 14. (b) Such hospital contract or agreements must provide for medical, hospital, and surgical attendance for such employee for sickness contracted during the employment, except venereal diseases and sickness as a result of intoxication, as well as for injuries received arising out of and in the course of the employment.

Limit to Hospital Assessments.

Section 14. (c) No assessment of employees for such hospital contracts or benefits shall exceed one dollar per month for each employee, except in cases where it shall appear to the satisfaction of the board, after a hearing had for that purpose that the actual cost of such service exceeds the said sum of one dollar per month, and any such finding of the board may be modified at any time when justified by a change of conditions, or otherwise, either upon the board's own motion, or the application of any party in interest.

No Employer to Make Profit in Hospital Agreements.

Section 14. (d) No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments. It is the purpose and intent of this act to provide that where hospitals are maintained by employers such hospitals shall be no more than self-supporting from assessment of employees, and that where hospitals are maintained by other than the employer, all sums derived by assessment of employees shall be paid in full to such hospital without deduction by the employer.

Board to have Supervision of Hospitals Maintained in Part by Assessments of Workmen—Reports.

Section 14. (e) Each and every hospital maintained wholly or in part by payments from workmen, which furnishes treatment and services to employees for sickness and injury, as provided in this act, shall be under the supervision of the board as to the services and treatment rendered such employees, and shall, from time to time, make reports of such services, attendances, treatments, receipts and disbursements as the board may require.

Liability for Treatment or Malpractice in Case of Hospital Services.

Section 14. (f) Neither an employer, an insurer, nor the board, shall be liable in any way for any act in connection with the treatment or care, or malpractice in treatment or care, of any sickness or injury sustained by an employee, or the beneficiary of any hospital contract, where such act or treatment or malpractice in treatment is caused, or alleged to have been caused, by any physician, hospital, or attendant furnished by such employer, insurer, or the board. In any action for malpractice arising out of the operations of this act the merits of such action shall be investigated by the Industrial Accident Board and the finding of the board in relation thereto shall be filed with the clerk of the court in which such action is pending.

Questions of Law in Certain Actions.

Section 15. In any action to recover damages for any act connected with the treatment or cure, or malpractice in treatment or care, of any sickness of, or injury sustained by an employee, the question of whether or not due care was given by the defendants shall be a question of law for the court.

Who Liable for Injuries Under the Different Plans of Act, and in What Amounts.

Section 16. Every employer who shall become bound by and subject to the provisions of Compensation Plan No. 1, and every employer and insurer who shall become bound by and subject to the provisions of Compensation Plan No. 2, and the Industrial Accident Fund where the employer of the injured employee has become bound by and subject to the provisions of Compensation Plan No. 3, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

Compensation for Injury Producing Temporary Total Disability.

Section 16. (a) For an injury producing temporary total disability, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if at the time of injury the employee received wages of less than six dollars per week, he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, but not, however, in any event, exceeding three hundred weeks.

For Total Disability, Permanent in Character.

Section 16. (b) For an injury producing total disability, permanent in character, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if at the time of the injury the employee received wages of less than six dollars per week, then he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, not exceeding four hundred weeks, after which time payments shall continue during disability at the rate of five dollars per week.

For Partial Disability.

Section 16. (c) For an injury producing partial disability, one-half of the difference between the wages received at the time of the injury and the wages which such injured employee is able to earn thereafter, not exceeding, however, the difference between the wages which the injured employee is able to earn after the injury and the maximum compensation allowed in cases of total disability; provided, however, that such a sum shall be paid as compensation in each case, which, when added to the wages which the injured employee is able to earn after the injury, will equal the minimum compensation allowed in cases of total disability. Such compensation shall be paid during the period of disability, not exceeding, however, one hundred and fifty weeks in cases of permanent partial disability and fifty weeks in cases of temporary partial disability.

For Injury Causing Death.

Section 16. (d) Where the injury causes death, fifty per centum of the wages received at the time of the injury, to his beneficiaries, if any, residing within the United States at the date of the happening of the injury, or, if residing outside of the United States, fifty per centum of such compensation, or, if none, then forty per centum of the wages received at the time of the injury to his major dependents, if any, if residing in the United States at the date of the happening of the injury, or, if none, then thirty per centum of the wages received at the time of the injury, to his minor dependents, if any, residing within the United States at the date of the happening of the injury, subject to a maximum compensation of ten dollars per week, and a minimum compensation of six dollars per week, for a period not exceeding four hundred weeks; provided, that if at the time of the injury the employee received wages of less than six dollars per week, the full amount of such wages per week for a period of not exceeding four hundred weeks.

Additional Compensation in Case Death Occurs Within Six Months.

Section 16. (e) There shall be paid, in addition to other compensation, if death occurs within six months of the happening of the injury, the reasonable burial expenses of the employee, not exceeding seventy-five dollars. If the employee leaves no beneficiaries, or major, or minor dependents, this shall be the only compensation.

Medical and Hospital Services to be Furnished.

Section 16. (f) During the first two weeks after the happening of the injury, the employer or insurer, or the accident fund, as the case may be, shall furnish reasonable medical and hospital services and medicines as and when needed, in an amount not to exceed fifty dollars in value, except

as otherwise in this act provided, and when the employer is a party to a hospital contract, unless the employee shall refuse to allow them to be furnished.

No Compensation During First Two Weeks.

Section 16. (g) No compensation shall be allowed or paid during the first two weeks of any injury, except as may be required by the provisions of section 16 (f).

Compensation to Run Consecutively—Minor Dependents not Residing in United States.

Section 16. (h) Compensation for all classes of injuries shall run consecutively and not concurrently, and as follows: First, the two weeks medical and hospital services and medicines as provided in section 16 (f), unless the employee is a contributor to a hospital fund, as otherwise in this act provided; after the first two weeks, compensation as provided in section 16 (a), or 16 (b), or 16 (c); following, either or none of the above, compensation as provided in section 16 (i); following any or either, or none of the above, if death results from the accident within six months of the date of the injury, burial expenses as provided in section 16 (e); following which, compensation to beneficiaries, if any; following which, if no beneficiaries, compensation to major dependents; following which, if no beneficiaries and no major dependents, compensation to minor dependents, if any. Provided, that no compensation shall be paid to a major or minor dependent who does not reside within the United States, or who did not reside within the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. Compensation due to major dependents, where there be more than one, shall be divided equally among them.

Compensation in Case of Following Injuries in Lieu All Other Except That Provided in Section 16 (f).

Section 16. (i) In case of the following specified injuries, the compensation, in lieu of any other compensation provided by this act, other than that provided in section 16 (f), unless the employee is a contributor to a hospital fund as otherwise in this act provided, shall be fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if, at the time of the injury the employee received wages of less than six dollars per week, then he shall receive the full amount of such wages per week, and shall be paid for the following periods:

For the loss of:

One arm at or near shoulder.....	200 weeks
One arm at the elbow.....	180 weeks
One arm between the wrist and elbow	160 weeks
One hand	150 weeks
One thumb and the metacarpal bone thereof.....	60 weeks
One thumb at the proximal joint	30 weeks
One thumb at the second distal joint.....	20 weeks
One first finger and the metacarpal bone thereof.....	30 weeks
One first finger at the proximal joint	20 weeks

One first finger at the second joint	15 weeks
One first finger at the distal joint	10 weeks
One second finger and the metacarpal bone thereof.....	30 weeks
One second finger at the proximal joint	15 weeks
One second finger at the second joint	10 weeks
One second finger at the distal joint	5 weeks
One third finger and the metacarpal bone thereof.....	20 weeks
One third finger at the proximal joint	12 weeks
One third finger at the second joint	8 weeks
One third finger at the distal joint	4 weeks
One fourth finger and the metacarpal bone thereof.....	12 weeks
One fourth finger at the proximal joint	9 weeks
One fourth finger at the second joint	6 weeks
One fourth finger at the distal joint	3 weeks
One leg at or so near the hip joint as to preclude the use of an artificial limb	180 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb.....	150 weeks
One leg between the knee and ankle.....	140 weeks
One foot at the ankle.....	125 weeks
One great toe with the metatarsal bone thereof.....	30 weeks
One great toe at the proximal joint.....	15 weeks
One great toe at the second joint	10 weeks
One toe other than the great toe with the metatarsal bone thereof	12 weeks
One toe other than the great toe at proximal joint.....	6 weeks
One toe other than the great toe at second or distal joint.....	3 weeks
One eye by enucleation.....	120 weeks
Total blindness of one eye.....	100 weeks

What Constitutes Total Disability.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character.

Hernia Cases.

Section 16. (j) A workman in order to be entitled to compensation for hernia must clearly prove: (1) That the hernia is of recent origin, (2) that its appearance was accompanied by pain, (3) that it was immediately preceded by some accidental strain suffered in the course of the employment, and (4) that it did not exist prior to the date of the alleged injury. If a workman, after establishing his right to compensation for hernia as above provided, elects to be operated upon, a special operating fee of not to exceed fifty dollars shall be paid by the employer, the insurer, or the board, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the results from such strangulation will not be compensated.

Paralysis of Limbs Considered Loss Thereof.

Section 16. (k) For the purpose of section 16 (i), the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of section 16 (i), the complete paralysis of both arms, both hands, both feet, or both legs, or any two of them, shall be considered the loss of such members.

Adjustment of Compensation in Case of Further Injuries.

Section 16. (l) Should a further accident occur to a workman who is already receiving compensation hereunder, or who has been previously the recipient of a payment or payments under this act, his further compensation shall be adjusted according to the other provisions of this act, and with regard to the combined effect of his injuries and his past receipt of compensation.

Compensation When Changes in Degree of Injury.

Section 16. (m) If aggravation, diminution or termination of disability takes place, or be discovered, after the rate of compensation shall have been established, or compensation terminated in any case, where the maximum payments for disabilities as provided in this act have not been reached, such changes may be adjusted for future application of compensation in accordance with the provisions hereof, or, in a proper case, terminate the payments.

Payments Made How.

Section 16. (n) All payments of compensation, as provided in this act, shall be made monthly, except as otherwise provided herein.

Monthly Payments Converted into a Lump Sum.

Section 16. (o) The monthly payments provided for in this act may be converted, in whole or in part, into a lump sum payment, which lump sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of five per centum per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary or major or minor dependents, as the case may be, and shall rest in the discretion of the board, both as to the amount of such lump sum payment, and the advisability of such conversion.

Assignment or Attachment of Payments.

Section 17. (a) No payments under this act shall be assignable, subject to attachment or garnishment, or be held liable in any way for any debts.

Liability in Case of Bankruptcy or Failure is First Lien.

Section 17. (b) In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this act, every liability which may be due under this act shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner, and at the times provided for in this act, the deficiency shall be a lien upon all the property of such employer or insurer within this state, and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

Waivers Invalid.

Section 17. (c) No agreement by an employee to waive any rights under this act for an injury to be received shall be valid.

Misrepresenting Pay-roll.

Section 17. (d) Any employer who shall misrepresent to the board the amount of a pay-roll upon which the premiums or assessments under

Compensation Plan No. 3 are to be levied, or upon which fees for factory inspection, subsequent inspection, or reinspection, as elsewhere provided in this act, are based, shall be liable to the state in ten times the amount of difference between the amount paid and the amount which should have been paid. Such liability may be recovered in a civil action brought in the name of the state. All sums collected under this section shall be paid into the fund to which the original payments were, or should have been credited.

Act not to Apply to Certain Railroads.

Section 17. (e) The provisions of this act shall not apply to any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this act.

Duplicate Receipts Paid for Injuries to be Filed—Statements of Medical Expenditures.

Section 17. (f) Every employer coming under the provisions of Compensation Plan No. 1, and every insurer coming under the provision of Compensation Plan No. 2, shall, on or before the fifteenth day of each and every month, file with the Industrial Accident Board duplicate receipts for all payments made during the previous month to injured workmen or their beneficiaries or dependents; and statements showing the amounts expended during the previous month for medical, surgical and hospital services and for the burial of injured workmen.

Notice of Claims for Injuries Other Than Death.

Section 17. (g) No claims to recover compensation under this act, for injuries not resulting in death, shall be maintained unless, within sixty days after the occurrence of the accident which is claimed to have caused the injury, notice in writing, stating the name and address of the person injured, the time and the place where the accident occurred and the nature of the injury, and signed by the person injured, or some one in his behalf, shall be served upon the employer or the insurer; provided, however, that actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury shall be equivalent to such service.

Employers and Insurers Required to File Reports of Accidents.

Section 17. (h) Every employer of labor, and every insurer is hereby required to file with the board, under such rules and regulations as the board may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the board in such form and such detail as the board shall from time to time prescribe, and shall make specific answers to all questions required by the board under its rules and regulations, except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

Confidential Information Used How.

Section 17. (i) No information furnished to the board by an employer or an insurer shall be open to public inspection, or made public except on order of the board, or by the board or a member of the board in the course

of a hearing or proceeding. Any officer or employee of the board who, in violation of the provisions of this section divulges any information, shall be guilty of a misdemeanor.

American Experience Table of Mortality Used.

Section 17. (j) Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American Experience Table of Mortality shall be used.

Misdemeanor for Employer to Deduct from Wages Any Part of Premium—Hospital Contributions.

Section 17. (k) It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this act from the wages or earnings of his workmen, or any of them, and the making, or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this act provided.

Hearings and Investigations—Technical Rules.

Section 18. (a) All hearings and investigations before the board, or any member thereof, shall be governed by this act and by rules of practice and procedure to be adopted by the board, and in the conduct thereof neither the board, nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings, or in the manner of taking testimony shall invalidate any order, decision, award, rule or regulation made, approved, or confirmed by the board.

Depositions may be Taken.

Section 18. (b) The board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the districts courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers, and accounts.

Powers of Board.

Section 18. (c) The board is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act.

Power to Issue Writs and Process—Fees for Serving.

Section 18. (d) The board and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the board, or any member thereof, shall extend to all parts of the state and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the board, or any member thereof.

The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed

by law for similar service and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

Power to Administer Oaths, Certify Official Acts, Issue Subpoenas—Witness Fees and Mileage.

Section 18. (e) The board, and each member thereof, its secretary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any injury, investigation, hearing, or proceeding in any part of the state. Each witness who shall appear, by order of the board, or any member thereof, shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the board, his fees and mileage may be paid from the funds appropriated for the use of the board in the same manner as other expenses of the board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place of which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board, or a member thereof or referee, as directed in the subpoena.

District Courts' Power Concerning Production of Testimony—Contempt.

Section 18. (f) The district court in and for the county in which any inquiry, investigation, hearing or proceeding may be held by the board, or any member thereof, shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, books, accounts and documents as required by any subpoena issued by the board, or any member thereof. The board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order not more than ten days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that

said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative and shall not be construed to impair or interfere with the power of the board, or a member thereof, to enforce the attendance of witnesses and the production of papers, and to punish for contempt, in the same manner and to the same extent as courts of record.

Certified Copies as Evidence.

Section 18. (g) Copies of official documents and orders filed or deposited according to law in the office of the board, certified by a member of the board or by the secretary under the official seal of the board to be true copies of the original shall be evidence in like manner as the originals.

Apportionment of Costs and Disbursements.

Section 18. (h) The costs and disbursements, incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parties on the same or adverse sides in the discretion of the board.

Books, Records and Pay-rolls Open to Inspection.

Section 19. The books, records, and pay-rolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the board or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the pay-roll; the number of men employed, and such other information as may be necessary for the board and its management under this act. Refusal on the part of the employer to submit said books, records, and pay-rolls for such inspection shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state, and paid into the Industrial Administration Fund.

Jurisdiction of Board to Hear Disputes and Controversies.

Section 20. (a) All proceedings to determine disputes or controversies arising under this act shall be instituted before the board, and not elsewhere, and heard and determined by them, except as otherwise in this act provided, and the board is hereby vested with full power, authority and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided.

Presumption as to Legality of Rules, Orders, Findings, etc., of Board.

Section 20. (b) All orders, rules, and regulations, findings, decisions, and awards of the board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules, and regulations, findings, decisions, and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the board or upon review.

Time for Filing—Final Findings and Awards.

Section 20. (c) After a final hearing by the board, it shall within thirty days make and file its findings upon all facts involved in the controversy, and its award, which shall state its determination as to the right of the parties.

Power of Board to Award Compensation and Time and Manner of Payment.

Section 20. (d) The board in its award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid and order payment thereof during the continuance of such disability; providing, however, that the payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this act to which said award and indemnity belong.

When a Nominal Disability Indemnity may be Awarded.

Section 20. (e) If in any proceeding it is proved that an accident has happened for which the employer would be liable to pay compensation if disability has resulted therefrom, but it is not proved that an incapacity has resulted, the board may, instead of dismissing the application, award a nominal disability indemnity if it appears that disability is likely to result at a future time.

Jurisdiction to Rescind or Amend any Order, Decision, Award, etc.

Section 20. (f) The board shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor. Any order, decision, or award rescinding, altering, or amending a prior order, decision or award, shall have the same effect as original orders, or awards.

Records of Proceedings to be Kept and Testimony to be Taken Down — Attorneys.

Section 20. (g) A full and complete record shall be kept of all proceedings and hearings had before the board or any member thereof, of any formal hearing had and all testimony produced before the board, or any member thereof, shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney. In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records and proceedings in the cause shall constitute the record of the board.

Collateral Attack not Permitted.

Section 20. (h) No orders or decisions of the board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided herein.

Application for Rehearing.

Section 21. (a) At any time within twenty days after the service of any order or decision of the board, any party or parties aggrieved thereby may apply for a rehearing upon one or more of the following grounds and upon no other grounds.

1. That the board acted without or in excess of its powers.
2. That the order, decision or award was procured by fraud.
3. That the evidence does not justify the findings.

4. That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence, have discovered and produced at the hearing.

5. That the findings do not support the order, decision or award.
6. That the order, decision, or award is unreasonable.

Board may at Any Time Diminish or Increase an Award.

Section 21. (b) Nothing contained in section 21 (a) shall, however, be construed to limit the right of the board, at any time after the date of its award, and from time to time after due notice and upon the application of any party interested to review, diminish or increase within the limits provided by this act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

Application for Rehearing to Set Forth What.

Section 21. (c) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers said order, decision, award, rule, or regulation to be unjust or unlawful, and shall in other respects conform to such rules and regulations as the board may prescribe.

Rules of Procedure on Rehearings.

Section 21. (d) The board shall have full power and authority to make and prescribe rules to govern the procedure upon rehearing, and any matter before it and any order made after such rehearing abrogating or changing the original order shall have the same force and effect as an original order and shall not affect any right, or enforcement of any right, arising from or by virtue of the original order.

Application for Rehearing or Appeal Shall not Operate as Stay.

Section 21. (e) An application for rehearing or the appeal herein-after provided shall not excuse any employer, employee or other person, from complying with or obeying any order or requirement of the board, or operate in any manner to stay or postpone the enforcement of an order or requirement thereof, except as the board or the court may direct.

Appeals to the District Court.

Section 22. (a) Within thirty days after the application for a rehearing is denied, or, if the application is granted, within thirty days after the rendition of the decision on the rehearing, and within twenty days after notice thereof, any party affected thereby may appeal to the district court of the judicial district of the state of Montana, including the county in said state wherein the employer may have his place of residence, or if such employer be a corporation, may have its principal office or place of business, or if said appeal be prosecuted by an injured workman or his dependents, such appeal may be taken to the district court wherein is located the county within which such workman was injured, which said appeal shall be for the purpose of having the lawfulness of the original order, decision or award, or the order, decision or award on rehearing inquired into and determined.

How Appeal Taken—Notice—Record—Trial.

Section 22. (b) Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such Industrial Accident Commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party if there

be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the board. If such party shall have left no address with the board then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said board of said notice, the said board shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said board, with the clerk of said district court. Immediately upon the return of such certified record, the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard, on the record of the board as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

Appearances—Setting Aside Conclusions, Orders, etc., of Board—Judgment and Findings.

Section 22. (c) The board, and each party to the action or proceeding before the board, shall have the right to appear in the proceeding, and it shall be the duty of the board to so appear. If the court shall find from such trial, as aforesaid, that the findings and conclusions of the board are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the board, or that any finding and conclusion or any order, rule or requirement of the board is unreasonable, the court shall set aside such finding, conclusion, order, judgment, decree, rule, or requirement of said board, or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order or judgment that shall be required, or shall be legal and proper in the premises.

Appeals to Supreme Court.

Section 22. (d) Either the board, or the appellant, or any adversary party, if there be one, may appeal to the supreme court of the state of Montana, from any final order, judgment or decree of the said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said supreme court, and shall be tried anew by said supreme court upon the record made in said district court and before said board, and judgment and decree shall be entered therein as expeditiously as possible.

Appropriation Out of State Treasury.

Section 23. (a) There is hereby appropriated out of the state treasury, the sum of fifty thousand (\$50,000) dollars, or so much thereof as may be necessary, to be known as the Industrial Administration Fund, out of

which the salaries, traveling and office expenses of the board shall be paid, and all other expenses incident to the administration of this act.

Appropriation from Industrial Accident Fund.

Section 23. (b) There is hereby appropriated out of the Industrial Accident Fund such sums as may be necessary to pay the compensation provided for in this act.

Court to Give Liberal Construction to Act.

Section 24. (a) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

Effect of Decision Holding Any Part of Act Unconstitutional.

Section 24. (b) If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act, so long as sufficient remains of the act to render the same operative and reasonably effective for carrying out the main purpose and intention of the legislature in enacting the same as such purpose and intention may be disclosed by the act.

Money in Industrial Accident Fund Held in Trust.

Section 24. (c) The moneys coming into the Industrial Accident Fund shall be held in trust for the purpose for which such fund is created, and if this act shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the legislature repealing this act; in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Pending Actions not Affected by Act.

Section 24. (b) This act shall not affect any action pending or any cause of action existing on the thirtieth day of June, 1915.

Annual Report—Copies for General Distribution.

Section 25. (a) The board shall, not later than the first day of October of each year, make a report to the Governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such report shall be printed for general distribution.

When Act to Take Effect.

Section 25. (b) This act shall take effect and be in force from and after its passage and approval, except as to its compensation provisions, which shall not take effect until the first day of July, 1915.

PART II.

COMPENSATION PLAN No. 1.

When and How Employer may Elect to Adopt—Direct Payment to Employee.

Section 30. (a) Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and be bound by Compensation Plan No. 1, upon

furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may by order of the said board, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

Proof of Solvency of Employer Electing Plan No. 1 to be Filed.

Section 30. (b) Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations or employments herein mentioned, and who shall have elected to be bound by such Compensation Plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board.

Employer Permitted to Carry on Business and Settle Directly With Employee—Renewal of Application.

If such employer, making such election, shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such Compensation Plan No. 1, shall at least thirty days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

Additional Proof of Solvency—Revocation of Order.

Section 30. (c) The board may at any time require from any employer acting under Compensation Plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer, of not less than ten or more than twenty days, after and upon a full hearing, revoke any order or approval theretofore made.

Requiring Security of Employer.

Section 30. (d) If said Industrial Accident Board shall find that such employer has not financial responsibility for the payment of the compensation herein provided to be paid which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said Industrial Accident Board must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of Compensation Plan No. 1, to give security for such payment, which security must be in such an amount as said board shall find is reasonable and necessary to meet all liabilities of such employer which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board and may be a certain estimated

per centum of said employer's last preceding annual pay-roll, or a certain per centum of the established amount of his annual pay-roll for said fiscal year, or said security may be in the form of a bond or undertaking executed to said Industrial Accident Board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of all such deposits or securities, and shall at any time, upon demand of the bondsmen or the depositor or the board, account for the same, and the earnings thereof.

Failure of Employer to Pay Compensation—Duty of Board.

Section 30. (e) Upon the failure of said employer to pay any compensation provided for in this act upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of such State Accident Board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said board, or sufficient thereof, into cash and to pay the same upon the liabilities of said employer, accruing under the terms of this act, and it shall be its duty, in so far as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes and may proceed in its own name to recover upon such bonds or foreclose and liquidate said securities.

When Employer to Make Deposit or Security to Guarantee Payment of Compensation.

Section 30. (f) Within thirty days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability in such sum as the board may direct; provided, however, that if sufficient securities are already on deposit with the said board or if the said board, shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

How Employer may be Relieved from Liability.

Section 30. (g) Any employer against whom liability may exist for compensation under this act may, with the approval of the board, be re-

lieved therefrom by (1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or (2) purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

PART III.

COMPENSATION PLAN No. 2.

Employer Electing Plan No. 2 to Insure His Liability.

Section 35. (a) Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and bound by Compensation Plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this state.

Duty of Employer Electing Plan No. 2—Amount of Insurance Necessary.

Section 35. (b) Any employer electing to become subject to and bound by Compensation Plan No. 2 shall file with the board written acceptance of the provisions of Compensation Plan No. 2, together with a statement upon forms provided by the board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon, the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amounts so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the board for each ensuing fiscal year during which said employer shall engage in his said employment, and shall remain subject to the provisions of Compensation Plan No. 2, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable and necessary investigation, and the said employer shall furnish to such board all information which it may require.

Policies to Contain What.

Section 35. (c) All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

Agreement to be Contained in Policies of Insurance.

Section 35. (d) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled

to compensation all the installments of compensation or other payments in this act provided for and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or by this act, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation.

Policies Made Subject to This Act—Form of Insurance.

Section 35. (e) Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board, and as otherwise provided by law.

Renewals.

Section 35. (f) Every renewal of such policy shall be made and delivered to said board at least thirty days prior to the expiration of the expiring policy.

Deposits by Insurer With Board.

Section 35. (g) Within thirty days of the happening of an accident where death, or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability in such sum as the board may direct.

How Insurer Relieved from Liability.

Section 35. (h) Any insurer against whom liability may exist for compensation under this act may, with the approval of the board, be relieved therefrom by (1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or (2) by purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this state, subject to the approval of the board.

Cancellation of Insurance Policy.

Section 35. (i) No policy of insurance issued under the provisions of Compensation Plan No. 2 shall be canceled within the time limited for its expiration except upon thirty days' notice to the employer in favor of whom such policy is issued, and to the board, unless such policy sought to be canceled shall have been sooner replaced by other insurance.

Reports of Insurance Companies to Board.

Section 35. (j) Every insurance company transacting business under this act, shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

Policies to Contain Clause Agreeing to Do What—Approval or Change.

Section 35. (k) Every policy or contract insuring against liability for compensation under Compensation Plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval,

change, or revision by the board, and shall contain the clauses, agreements, and promises required by this act.

Deposits Under Plan No. 2 as Security.

Section 35. (1) Any deposit made under the provisions of Compensation Plan No. 2 shall be held in trust by the treasurer of the board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of such deposit, and shall at any time, upon demand of his bondsmen, the depositor, or the board, account for the same and the earnings thereof.

PART IV.

COMPENSATION PLAN No. 3.

What Necessary in Electing Plan No. 3.

Section 40. (a) Every employer, subject to the provisions of Compensation Plan No. 3, shall, in the manner and at the times herein specified, pay into the state treasury, in accordance with the following schedule, a sum equal to the percentage of his total annual pay-roll specified in this section; which said schedule is subdivided into classes, and the percentage of payments of premiums or assessments to be required from each of said classes is as follows:

Percentage of Pay-roll to be Paid in Under Plan.

Class One—Broom or brush manufacturing, without sawmill; theater stage employees; moving picture operators; electrotyping; engraving; lithographing; photo engraving; stereotyping; embossing; bookbinding; printing; jewelry manufacturing; not otherwise specified; sixty-five one hundredths of one per centum.

Class Two—Cloth, textile, and wool manufacturing, not otherwise specified; wharf employees, other than stevedores and longshoremen; eight-tenths of one per centum.

Class Three—Manufacturing alcohol, drugs, other than ammonia; candy, crackers, saddles, harness, leather novelties, mattresses, not including springs or wire, paint, varnish, wagons, buggies, carriages, sleighs, cutters; operation of tubs and steamboats; manufacturing roofing paper and articles of paper not otherwise specified, paper boxes, automobiles, motor trucks, hardware; working in rubber, not otherwise specified; manufacturing boots and shoes; manufacturing articles of and working in leather not otherwise specified; one and three-tenths per centum.

Class Four—Manufacturing cheese, condensed milk; operating creameries, manufacturing spices and condiments; paper-hanging; kalsomining; whitewashing; making willow baskets; setting tiles; mantles and marble

work, inside work only; making grease, lard, soap, tallow; inside plumbing work; installing heating systems; painting and decorating, inside work only; metal ceiling work; one and four-tenths per centum.

Class Five—Manufacturing glass; operating breweries, bottling works, grain warehouses, grain elevators; manufacturing articles of brass, copper, lead and zinc; operating machine-shops, not otherwise specified; lathing, plastering; canneries of meat, fruit, vegetables, or fish, not including can manufacturing; cutting stone or paving blocks, other than in quarries, with or without machinery; installing electrical apparatus inside; installing fire-alarm apparatus inside; covering boilers or steam-pipes; concrete laying in floors, street paving or sidewalks, not otherwise specified; laying asphalt and other paving not otherwise specified; including shop and yard; manufacturing canoes and row-boats; well-drilling; constructing and repairing of paving of bricks or blocks; one and five-tenths per centum.

Class Six—Operating of laundries with power, dyeing, bleaching, and cleaning works; manufacturing of furniture, show-cases, office and store furniture and fixtures; cabinet-making; manufacture of wire mattresses, bed-springs, wooden coffins, caskets, rough wooden boxes for coffins; building hothouses, working in foodstuffs, fruits, edible oils or vegetables, not otherwise classified; operating flour-mills, chop-mills, feed-mills; one and six-tenths per centum.

Class Seven—Manufacturing wood fibreware; installing automatic sprinklers or ventilating systems; setting glass; erecting fireproof doors and shutters inside of buildings; operating tanneries, sugar factories; beveling glass; manufacturing peat fuel; building wooden stairs; manufacturing brick, including kilns and buildings and diggings in pits, brickettes, brooms with sawmills, earthenware, fire-clay, porcelain ware, pottery, tile, terra-cotta; brush-making with sawmills; one and eight-tenths per centum.

Class Eight—Manufacturing of ammonia; operating waterworks, gasworks; grading, either of streets or otherwise, or road-making, without blasting; construction of plank road, plank street or plank sidewalk; operating creosoting works, pile-treating works; treating ties or other timber products; plumbing, both at and away from the shop, including house connections, without blasting; construction of waterworks, gasworks and coke ovens, including laying of mains and connections, without blasting; one and nine-tenths per centum.

Class Nine—Manufacturing artificial ice; operating refrigerator plants, cold storage plants, foundries, packing-houses, including slaughtering; manufacturing agricultural implements, threshing machinery, traction engines, harvesting machinery; manufacturing asphalt; operating steam-heating and power-plants; manufacturing gas or gasoline engines; operating ferries; stone-crushing; not at quarries; boat or ship building, other than canoes or row-boats, without scaffolds; laying hot flooring compositions, not otherwise specified; operating stockyards; two per centum.

Class Ten—Operating paper-mills, pulp-mills, longshoring, stevedoring, manufacturing fertilizers; operating garbage works; incinerators, crematories, lime kilns or burners, no quarrying; installing boilers, steam engines, dynamos, machinery not otherwise specified; putting up belts for machinery; manufacturing barrels, kegs, pails, staves, tubs, excelsior, veneer, packing cases, sash, doors and blinds; operation and maintenance of inter-urban railways, without third rail; two and two-tenths per centum.

Class Eleven—Millwrighting, not otherwise specified; manufacturing building material, not otherwise specified; working in building material, not otherwise specified; two and one-quarter per centum.

Class Twelve—Operation of smelters; manufacturing of metallic cof-fins; manufacturing of iron or steel; boat or ship rigging; planing-mills, independent; cement manufacturing; operating blast furnaces; two and three-tenths per centum.

Class Thirteen—Street or road making, with blasting; manufacturing wood baskets, kindling wood, window and door screens, cordage and rope; manufacturing and refining oil; placing wires in conduits; two and four-tenths per centum.

Class Fourteen—Concentrating and amalgamating of ores; wood-working, not otherwise specified; operating gravel bunkers; hauling gravel; operating gravel pits; operating wood-saws; painting, exterior work; operating boiler-works; making steam shovels; boilers; shipwrighting; operating sawmills, lath-mills; bridge work factories; operation of and work in mines, other than coal; two and five-tenths per centum.

Class Fifteen—Operating rolling-mills; manufacturing tanks, not otherwise specified; erecting and repairing advertising signs; harvesting and storing of ice, including loading on cars; making and repairing of locomotives and railroad cars; cutting stone at stone-yards connected with quarries; boat or ship building with scaffolds; logging operations, with or without machinery; booming or driving logs, ties, or other timber products; operating shingle-mills; operating quarries; two and three-quarters per centum.

Class Sixteen—Operating dredges; construction of telephone and telegraph systems; construction of dams and reservoirs, electric light and power plants, water works and water systems; installing furnaces; constructing blast furnaces; sewer building, maximum depth of excavation at any point seven feet; operation and maintenance of steam railways, including logging railways, operating coal mines; three per centum.

Class Seventeen—Operating drydocks, including floating drydocks; ornamental metal work within buildings; electric railway construction, without rock work or blasting; railroad construction, including street and cable railways, without rock work or blasting; building canals, without rock work or blasting; installing freight or passenger elevators, operation of telephone and telegraph systems; making dredges; constructing drydocks; three and one-quarter per centum.

Class Eighteen—Carpenters not otherwise specified; constructing grain elevators, not metal framed; stump pulling with donkey-engines; steam, electric and cable railway construction, with rock work or blasting; construction of logging railways, with rock work or blasting; operation and maintenance of electric railways using third rail, and street railways, all systems, including electric and cable; operation and maintenance of electric light and power plants, including transmission systems and extensions of lines; electric systems, not otherwise specified; three and one-half per centum.

Class Nineteen—Pile-driving; clearing land with blasting; galvanized iron or tin works; marble work; fireproofing of buildings, by means of wire netting and concreting; cellar excavation, with or without blasting; three and three-quarters per centum.

Class Twenty—Constructing breakwaters, marine railways and jetties; installation and repair of electrical apparatus, not otherwise specified, outside work only; stamping of metal or tin; building trestles and tunnels other than mining; shaft sinking, not otherwise specified; four per centum.

Class Twenty-one—Moving safes, boilers, machinery; construction of tanks, water-towers, windmills, not metal frame; plumbers making house connections with blasting; roof work; slate work; stone work; stone setting; brick work construction, not otherwise specified; construction of canals, with rock work or blasting; bridge building, wooden; construction of floating docks; constructing chimneys of metal or concrete; four and one-half per centum.

Class Twenty-two—Excavations, not otherwise specified; laying of mains and connections, with blasting; sewer building, where maximum depth of excavation at any point exceeds seven feet; blasting, not otherwise specified; manufacturing fire works; five per centum.

Class Twenty-three—Erecting fire-escapes, fireproof doors and shutters outside of buildings; building concrete structures, not otherwise specified; concrete or cement work not otherwise specified; six per centum.

Class Twenty-four—Constructing iron or steel frame structures or parts; constructing and repairing steel frames and structures; subaqueous works; caisson works; six and one-half per centum.

Class Twenty-five—House-moving, house-wrecking; construction or repair of steeples; construction of brick chimneys; six and three-quarters per centum.

Class Twenty-six—Manufacturing powder, dynamite and other explosives, not otherwise specified; ten per centum.

Class Twenty-seven—Any employer and his employees engaged in non-hazardous work or employment, by their joint election, filed with and approved by the board, may accept the provisions of Compensation Plan No. 3. In such event, such employer and employees shall be known as Class Twenty-seven, the rate of assessment in which shall be one-half of one per centum.

Assessments When Employment Embraces Different Classifications.

Section 40. (b) If a single establishment or work comprises several occupations listed in section 40 (a) in different classifications, the assessment shall be computed according to the pay-roll of each occupation if clearly separable; otherwise an average rate of assessment shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards.

What Classifications Advisory Only and Subject to Rearrangement, etc.

Section 40. (c) The classification of hazardous occupations in section 40 (a) and the rates of premium or assessment therein fixed are advisory only, and the board is hereby given full power and authority to rearrange, revise, add to, take from, change, modify, increase, or decrease any classification or rate named in section 40 (a) as in its judgment or experience may be necessary or expedient; provided, that no change in the classification or rates prescribed in section 40 (a) shall be made effective prior to the end of the first fiscal year, and thereafter any changes so made shall not become effective until thirty days after the date of the order or decision of the board making such change except that in case of new industries, or

industries not enumerated in section 40 (a), the board shall have the right to make an immediate classification thereof and establish a rate therefor.

Intent and Purpose of Plan No. 3—Fund to be Paid for What Purpose Only—Accounts.

Section 40. (d) It is the intent and purpose of Compensation Plan No. 3 that each industry, trade, occupation, or employment coming under the provisions of said plan shall be liable and pay for all injuries happening to employees coming under the provisions of said plan, and that all funds collected by assessments as herein provided shall be paid into one common fund to be known as the Industrial Accident Fund, which fund shall be devoted exclusively to the payment of all valid claims for injuries happening in each industry, trade, occupation, or employment coming under the provisions of Compensation Plan No. 3; provided that accounts shall be kept with each industry, trade, occupation or employment in accordance with the foregoing classifications, or otherwise, as the board may direct, both as to receipts and disbursements, for the purpose of providing information and statistics necessary for determining any changes in such rates or classifications.

Initial Payment July 15, 1915.

Section 40. (e) There shall be collected from all classes as initial payment into the Industrial Accident Fund, on or before the fifteenth day of July, 1915, one-fourth of the premium of assessment for that fiscal year, and one-twelfth thereof at the first of each month beginning with October 1, 1915; provided, that if such fund shall have a sufficient balance on hand at the end of the first three months, or any month thereafter, to meet the requirements of the Industrial Accident Fund, no assessment shall be called for such month.

Manner and Time of Making Payments by Employers.

Section 40. (f) The first payment shall be collected upon the pay-roll of the months of April, May and June, 1915. At the end of each calendar year an adjustment of the account shall be made upon the basis of the actual pay-roll. Any shortage shall be made good within thirty days thereafter. Every employer who shall enter into business at any intermediate day shall make his payments in the same manner and upon the same basis before commencing operations; the amount of such payments shall be calculated upon his estimated pay-roll, and an adjustment shall be made on or before February 1st in the year following, in the manner above provided.

In Case of Default, Rate to be Advanced Twenty-five Per Cent.

Section 40. (g) Any employer who is in default in the observance of any order of the board, issued pursuant to the provisions of section 40 (a) to 40 (f) inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum over the established rate, and such advanced rate shall continue and be in force until such employer shall have ceased to be in such default.

Changes in Classification of Risks to be Equalized.

Section 40. (h) Any change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the calendar year, shall be equalized by the board within thirty days after the end of such year in proportion to its duration in accordance with the schedules provided in this act.

Deficiency in Industrial Accident Fund.

Section 40. (i) If, at the end of any year, it shall be seen that the contribution to the Industrial Accident Fund by any class of industry shall be less than the drain upon such fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class in proportion to their respective payments for the previous year.

Amount to be Set Apart When Required Payment Reasonably Certain.

Section 40. (j) Upon the happening of an accident where death, or the nature of the injury renders the amounts of future payments certain or reasonably certain, the board shall forthwith cause the treasurer of the board to set apart out of the Industrial Accident Fund a sum of money, to be calculated on the basis of the maximum sum required to pay the compensation accruing on account of such injury, which will meet such required payments not exceeding, however, the sum of four thousand dollars for any one case.

Such Reserve to be Invested in Bonds or Securities Named—Making Good Deficiency.

Section 40. (k) The treasurer of the board shall invest such reserve in bonds of the United States, bonds of the state of Montana, or bonds of any county, city, or school district in the state of Montana, or any other security which may be approved by said board, and out of the same and its earnings shall be paid the monthly installments, and any lump sum then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the Industrial Accident Fund.

Treasurer to Keep Accounts of Segregations.

Section 40. (l) The treasurer of the board shall keep an accurate account of all such segregations of the Industrial Accident Fund, and upon direction of the board shall divert from the main fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

Collection in Case of Default by Employer.

Section 40. (m) If any employer shall default in any payment to the Industrial Accident Fund, the sum due may be collected by an action at law in the name of the state, and such right of action shall be cumulative.

Injury Happening While Employer is in Default.

Section 40. (n) For any injury happening to any of his workmen during default in any payment to the Industrial Accident Fund, the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the Industrial Accident Fund the amount of such default, together with the penalty prescribed by section 40 (g).

Assignment of Cause of Action to State.

Section 40. (o) The person entitled to sue under the provisions of section 40 (n) shall have the option of proceeding by suit or taking under this act. If such person take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the Industrial

Accident Fund. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.

Prosecution or Settlement of Assigned Cause of Action.

Section 40. (p) Any cause of action assigned to the state under the preceding section may be prosecuted or compromised by the board in its discretion.

Application for Compensation Under Plan No. 3.

Section 40. (q) Where a workman is entitled to compensation under Compensation Plan No. 3, he shall file with the board his application therefor, together with the certificate of the physician who attended him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the workman.

Duty of Physician—Physician to be Paid Out of What Fund.

Section 40. (r) For a proper compliance with the provisions of the preceding section, the physician, after approval by the board, shall be paid out of the Industrial Administration Fund one and one-half dollars for each case.

Application in Case of Death.

Section 40. (s) Where death results from the injury, the parties entitled to compensation under Compensation Plan No. 3, or someone in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the board.

What Included in Computing Compensation in Hazardous Employment.

Section 40. (t) In computing the pay-roll, the entire compensation received by every workman employed in the hazardous occupations enumerated in this act, shall be included, whether it be in the form of salary, wage, piecework, overtime, or any allowance in the way of profit-sharing premium, or otherwise, and whether payable in money, board or otherwise.

Disbursements Out of Industrial Accident Fund—Employer to Pay Warrant.

Section 40. (u) Disbursements out of the Industrial Accident Fund shall be made by the treasurer of the board as the board may order. If at any time there shall not be sufficient money in the Accident Fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid with interest thereon at the rate of six per centum per annum from the date of such payment to the date upon which the next assessment becomes payable, and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

Earnings and Interest on Deposits—Treasurer to Make No Profit.

Section 40. (v) All earnings made by the Industrial Accident Fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said fund, and the making of profit, either directly or indirectly, by the treasurer of the board, or any other person, out of the use of the accident fund shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the State Penitentiary for a term not exceeding two years, or a fine not exceeding five thousand dollars, or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

PART V.**SAFETY PROVISIONS.****Unsafe Places for Workmen Forbidden.**

Section 50. (a) No employer shall construct, maintain, or operate, or cause to be constructed, maintained, or operated any place of employment that is not safe.

Removal of Safety Devices, etc., Forbidden.

Section 50. (b) No employee shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for protection of any employee in such employment or place of employment, or fail or neglect to do anything reasonably necessary to protect the life and safety of himself and other employees.

Jurisdiction and Supervision of Board Over Employment and Places of Employment.

Section 50. (c) The board is vested with full power and jurisdiction over and shall have such supervision of every employment and place of employment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

Powers of Board Regarding Safety of Employees.

Section 50. (d) The board shall have power, in addition to other powers herein granted, by general or special orders, rules or regulations, or otherwise:

1. To declare and prescribe what safety devices, safeguards, or other means or methods of protection as are well adapted to render employees and places of employment safe.

2. To fix such reasonable standards and to prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means and methods of protection, as may be necessary for the protection of the life and safety of employees.

3. To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

4. To require the performance of any act necessary for the protection of life and safety of employees.

5. To declare and prescribe the general form of industrial accident reports the accidents to be reported and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the board from requiring supplemental accident reports; provided, however, that where, by the laws of the state of Montana, the manner or method of carrying on any business, or the rules or regulations in relation thereto, or the character or kind of safety devices has been prescribed, no other or additional requirements shall be made by the board, but it shall be the duty of the board to see that the employer lives up to and obeys said laws.

Notice of Hearing for Purpose of Considering and Issuing General Safety Orders.

Section 50. (e) Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders, the board shall cause a notice of such hearing to be published in one or more daily newspapers of general circulation, published and circulated in the state. No defect or inaccuracy in such notice, or in the publication thereof shall invalidate any general order issued by the board after a hearing has been had.

Places Defined as Hazardous to be Inspected Once Each Year.

Section 51. (a) After July 1, 1915, every place of employment of a work or occupation defined by sections 4 (a), 4 (b), 4 (c), 4 (d), 4 (e), and 5 of this act to be hazardous, shall be inspected, at least once during each year, by an inspector or examiner appointed by the board. Such inspection shall be for the purpose of determining the condition and operation of such places of employment, as regards the safety of employees working therein, and the use of safeguards, safety appliances, and reasonably safe tools and appliances.

Report of Inspection.

Section 51. (b) A report of such inspection shall be filed in the office of the board and a copy thereof given the employer.

Certificate of Safety of Inspected Place.

Section 51. (c) Each place of employment inspected as provided in section 51 (a) and found in a satisfactory condition shall receive from the board, upon payment of the inspection fees hereinafter provided for, a certificate to that effect, which certificate must be prominently displayed, under glass, in one of the principal places of the establishment so inspected.

When Board may Order Safety Devices Installed.

Section 51. (d) If, after such inspection and report, thereof, to the board, it shall be found that any such place of employment is not constructed, maintained or operated as provided in this act, the board shall order the installation, use, maintenance and operation, within such reasonable time as the board may direct, of such safety devices, safeguards, and other means and methods of protection as may be necessary to reasonably insure the safety of the workmen employed therein, subject to the provisions of section 51 (e).

When Board or Inspector may Order Place of Employment Closed and Put in Safe Condition.

Section 51. (e) If after such inspection, the board or any inspector or examiner thereof, shall find such place of employment in such an unsafe condition as to constitute an immediate menace to the safety of the workmen employed therein, the board, or any inspector or examiner thereof, may order any such place of employment closed, or the work therein to cease, until such safety devices, safeguards, and other means and methods, or changes or removals, as may be ordered by the board, or any inspector or examiner thereof, shall have been installed, repaired, changed, or removed, and such place of employment put in such condition as will reasonably insure the safety of the workmen employed therein.

Fee for Annual Inspection to be Paid by Employer.

Section 52. (a) For each annual inspection made under the provisions of this section, the employer shall pay, at the time of such inspection, a fee of five cents for each one thousand dollars or fraction thereof of his annual pay-roll for the preceding year, provided, that no inspection fee under this section shall be less than five dollars.

Fees in Subsequent Inspections.

Section 52. (b) The fees for any subsequent or reinspection made during any year in which an annual inspection shall have been made, shall be:

Where the annual pay-roll for the preceding year shall have been not more than twenty-five thousand (\$25,000) dollars, five (\$5) dollars.

Where the annual pay-roll for the preceding year shall have been more than twenty-five thousand (\$25,000) dollars, but not more than one hundred thousand (\$100,000) dollars, ten (\$10) dollars.

Where the annual pay-roll for the preceding year shall have been more than one hundred thousand (\$100,000) dollars but not more than five hundred thousand (\$500,000) dollars, twenty (\$20) dollars.

Where the annual pay-roll for the preceding year shall have been more than five hundred thousand (\$500,000) dollars but not more than one million (\$1,000,000) dollars, forty (\$40) dollars.

Where the annual pay-roll for the preceding year shall have been more than one million (\$1,000,000) dollars, fifty (\$50) dollars.

Inspection Fees and Fines to be Paid Monthly into What Fund.

Section 52. (c) All fees received by the board for inspection, or for subsequent or reinspection, and all fines imposed or collected for a violation of the safety provisions of this act shall be paid monthly to the State Treasurer who shall credit such payments to the Industrial Administration Fund.

Orders Concerning Places and Employments Found to be Unsafe.

Section 53. (a) Whenever the board shall find, that any employment or place of employment is not safe, or that the practice or means or methods of operation or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employees in such employments and places of employment, the board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employments and places of employment,

and may in said order direct that such additions, repairs, improvements or changes be made; and such safety devices, and safeguards be furnished, provided and used as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in such order.

Board may Grant Time Within Which to Comply With Any Order.

Section 53. (b) The board may, upon application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the board for an extension of time, which the board shall grant if it finds such an extension of time necessary.

Board may Summarily Investigate Places Believed to be Unsafe.

Section 53. (c) Whenever the board shall learn, or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee, it may summarily investigate the same, with or without notice or hearings, and enter and serve such order as may be necessary relative thereto.

Compliance With Orders, Directions, Rules, etc., Enjoined.

Section 53. (d) Every employer, employee and other person shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the board, and shall do everything necessary or proper in order to secure compliance with, and observance of every such order, decision, rule, or regulation.

Act not to Deprive Any Other Public Corporation, Board or Department of Jurisdiction.

Section 53. (e) Nothing contained in this act shall be construed to deprive any other public corporation, board or department of any power or jurisdiction over or relative to any place of employment; provided, that whenever the board shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the board of a copy thereof with the secretary or clerk of any such public corporation to which, or within whose jurisdiction it may apply, establish a minimum requirement concerning the matters covered by such order, and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the board.

Orders, Rules, Findings, etc., of Board as Evidence.

Section 53. (f) Every order of the board, general or special, its rules and regulations, findings or decisions shall be admissible in evidence in any prosecution for, or suit to prevent, the violation of any of the provisions of this act, and shall be presumed to be reasonable. This presumption is, however, a rebuttable presumption.

Board may Investigate Cause of All Industrial Accidents — Orders and Recommendations Concerning Same.

Section 53. (g) The board may investigate the cause of all industrial accidents occurring in any employment or place of employment, or directly or indirectly arising from, or connected therewith, resulting in personal injury or death; and the board shall have the power to make such orders or recommendations with respect to such accidents as may be just and

reasonable, provided that neither the order nor the recommendation of the board, nor any accident report filed with the board, shall be admitted as evidence in any action for damages, or any proceeding to recover compensation, based on or arising out of such injury or death.

When Rate upon Place may be Advanced Fifty Per Cent.

Section 53. (h) If, by reason of poor or careless management, or otherwise, any place of employment be unduly dangerous, in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of this act, and such employer shall be under Compensation Plan No. 3, the board, in addition to any other penalty provided by this act, shall advance the rate upon such place of employment fifty per centum, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment, and such employer shall have obtained a certificate of the inspector or examiner provided for herein.

Violation of Safety Provision a Misdemeanor.

Section 54. Every employer, employee, or other person, who either individually or acting as an officer, agent or employee of a corporation, or other person, violates any safety provisions contained in this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof or who directly or indirectly, knowingly induces another so to do, is guilty of a misdemeanor.

Inspection of Mines Shall be Made by Whom—Fees.

Section 55. (a) Whenever in this act the inspection of mines is referred to, such inspection shall be made by the inspector of mines, or his deputy, and nothing in this act contained shall be construed as modifying or limiting in any way the duties required to be performed by the inspector of mines as may be otherwise provided by law; provided, however, that the inspector of mines shall collect and account for the fees herein prescribed for inspection or subsequent or reinspection.

Rules, Relating to Operation of Mines must be Concurred in by Mine Inspector.

No rule, regulation or requirement relating to the operation of mines within the state of Montana made by said board shall be lawful or valid unless the same shall be concurred in and approved by the state mine inspector, and shall have been within the power of the said state mine inspector, to make in the first instance.

Orders—Requirements of Inspector of Mines have What Force.

Section 55. (b) A copy of any order, direction or requirement of the inspector of mines shall be filed with the board and shall thereupon become and have all the force and effect of an order of the board, subject only to review by the court, as in this act provided.

Repealing Clause.

Section 56. All acts and parts of acts in conflict herewith are hereby repealed.

Act to Take Effect When.

Section 57. This act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1915.

Editorial Notes.

Constitutionality of workmen's compensation acts. Ann. Cas. 1912B, 174; Ann. Cas. 1914B, 498.

What is accident arising out of and in course of employment within meaning of workmen's compensation act. Ann. Cas. 1913C, 4.

Who is "workingman" within meaning of workmen's compensation act. Ann. Cas. 1913C, 28.

Liability of state as employer within employers' liability or workmen's compensation act. Ann. Cas. 1914B, 889.

Who is "dependent" within workmen's compensation act. Ann. Cas. 1913E, 480.

Meaning of "average weekly earnings" in workmen's compensation act. Ann. Cas. 1913D, 1024; Ann. Cas. 1914C, 186.

Provisions in statute respecting medical examination of workman. Ann. Cas. 1914C, 86.

Residence of beneficiary as affecting right to compensation under workmen's compensation act. Ann. Cas. 1912D, 862.

LIABILITY OF RAILROAD TO EMPLOYEES.

Chapter 29, Laws 1911, page 47.

"An act defining the liability of persons or corporations operating any railroad in this state, for injuries received by employees thereof, or in consequence of the death of any such employee, by reason of negligence, and to declare void, contracts restricting such liability."

Be it enacted by the Legislative Assembly of the State of Montana:

Liability for Death or Personal Injury.

Section 1. Every person or corporation operating a railroad in this state shall be liable in damages to any person suffering injury while he is employed by such person or corporation so operating any such railroad, or, in case of the death of such employee, instantaneously or otherwise, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such person or corporation so operating such railroad in or about the handling, movement or operation of any train, engine or car, on or over such railroad, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment.

Contributory Negligence—Diminution of Damages.

Section 2. In all actions hereafter brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this act, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such person or corporation so operating such railroad of any statute enacted for the safety of employees contributed to the injury or death of such employee.

Assumption of Risk.

Section 3. An employee of any such person or corporation so operating such railroad shall not be deemed to have assumed any risk incident to his employment when such risk arises by reason of the negligence of his employer or of any person in the service of such employer.

Exemption from Liability by Contract.

Section 4. Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any such person or corporation so operating such railroad to exempt itself from any liability created by this act shall, to that extent, be void; provided, that in any action brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this act, such person or corporation may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto, on account of the injury or death for which said action is brought.

Section 5. This act shall be in force and effect from and after its passage and approval.

Approved February 16, 1911.

INSURANCE OF COAL MINERS AND WASHERS.

Chapter 67, Laws 1909, page 81.

An act to create a state accident insurance, and total permanent disability fund, for coal miners and employees at coal washers in the state of Montana, and providing for the maintenance and management of the same; extending and defining the duties of the State Auditor; and fixing penalties for the violation of the provisions of this act.

Be it enacted by the Legislative Assembly of the State of Montana:

Employees of Coal Mines to be Insured.

Section 1. All workmen, laborers and employees employed in and around any coal mines, or in and around any coal washers in which coal is treated, except office employees, superintendents and general managers, shall be insured in accordance with the provisions of this act, against accidents occurring in the course of their occupations.

Creation of Insurance Fund.

Section 2. All corporations, partnerships, associations or persons engaged in the business of operating any coal mine or coal washers in the state of Montana shall pay to the Auditor of the state, within five days after the monthly wages at the particular mine shall have been paid, one cent per ton on the tonnage of coal mined and shipped, or sold locally, or having been mined is ready for shipment or sale during the month for which the wages were paid; and all persons mentioned in section 1 employed in and about coal mines shall allow to be deducted from their gross monthly earnings one per cent thereof, the deduction to be made by the agent, manager, or foreman of any corporation, association, partnership, person or persons engaged in the business of operating any coal mine or coal washer, and paid to the State Auditor within five days after such monthly wages have been paid.

Reports to State Auditor.

Section 3. The agent, manager, foreman or accountant of any corporation, partnership, association, person or persons engaged in mining coal in Montana, shall on or before the fifth day succeeding the pay-day at his respective mine, make report under oath to the State Auditor as to the tonnage mined and subject to the payment of one cent per ton thereon; and stating the gross earnings subject to the one per cent deduction as provided in this act, accompanied by a certified check in full for the amount of the tax provided in section 2 of this act. It shall be unlawful for any person, employer, employee, corporation, partnership, association or union to make any contract waiving, avoiding or affecting the full legal effect of this act.

Duties of State Auditor and Treasurer.

Section 4. It is hereby made the duty of the State Auditor to receive all moneys as provided for in this act, and to send the proper acknowledgment to the person making such remittance. The Auditor shall pay all moneys so received by him to the State Treasurer, who shall keep such sums in safe custody in a distinct fund to be known as the Employers and Employees Co-operative Insurance and Total Permanent Disability Fund. The State Treasurer must invest the surplus of this fund in safe and convertible state, county or city bonds or bonds of the United States. All interest accruing from such investments shall be accredited to this insurance fund. The bond of the State Treasurer shall be liable for such funds, and it shall be his duty to keep accurate accounts of the receipts and disbursements of such money.

Statistics to be Kept by Auditor.

Section 5. The Auditor of state shall keep full statistics of the operation of this function of his department in the event of death by accident, of an employee insured under this act, who shall have come to his death in the course of his employment and by causes arising therein. The Auditor of state upon being satisfied by adequate evidence of such death shall issue a warrant upon the State Treasurer to persons dependent upon the deceased, these warrants to issue in the following order: (1) To surviving wife and child, or children, in equal shares, and if neither wife nor child, or children be alive, then (2) to surviving parents who are dependent, or partially so, upon the deceased; if none, then (3) to such other relative of the deceased as survive him and are dependent upon him in the sum of three thousand (\$3,000) dollars.

Compensation for Injuries.

Section 5a. A workman receiving injuries which permanently incapacitate him from the performance of work shall receive a compensation monthly, not to exceed one dollar (\$1) a day for each working day. Compensation for permanent injury shall not be allowed until after the expiration of twelve weeks from the time such injuries were sustained, provided that the medical practitioner examines and pronounces the injury as being permanent, compensation may then be allowed from commencement of disability. The Auditor of state, however, may, when in his judgment he deems it advisable, use so much of the funds as is necessary in the procuring of a medical practitioner, for the purpose of examination or treatment under this act, for such injuries as herein mentioned compensation shall continue during disability, or until settlement is effected as provided for

in section 9 of this act. Total or permanent disability shall consist of the loss of both legs or both arms, the total loss of eyesight or paralysis, or other conditions incapacitating him from work, caused by accident, or injuries received during employment as specified by this act; provided, that if death, as a result of the injury, ensues at a period not longer than one year from date of accident the sum of three thousand dollars (\$3,000) shall be paid the deceased workman's dependents as hereinbefore provided. The representatives of a foreigner, except the widow or dependent children, who were not living within the country at the time of the accident, shall have no claim for the compensation provided for in this act. Such foreign persons shall file their foreign address, if married, with the office of their employer with whom they are employed and duplicate thereof with the State Auditor, giving their wife's name and dependent children, and such other identification, as may be required by the Auditor of state. Loss of limb, or eye, caused by accident to a workman while employed as provided for in this act, shall be compensated for in the sum of one thousand (\$1,000) dollars, provided, that in the event there shall be no funds available in the fund to pay the Auditor's warrant when drawn the same shall draw interest out of the fund at the rate of ten per cent per annum until such warrant is called for payment by the Treasurer which shall be as soon as the fund is sufficient to pay the same with its interest then due.

Application for Monthly Allowance.

Section 6. Where a workman is entitled to monthly payments under this act, he shall file with the Auditor of state his application for such, together with a certificate from the county physician of the county wherein he resides, attested before a notary public.

Investigation of Fraudulent Claims.

Section 7. If any person or persons, company or corporation who is then paying into this insurance fund shall believe that any person or persons are obtaining, or having made application to obtain benefits hereunder improperly or fraudulently, and shall file his written request that such person's claim be investigated, the State Auditor must, upon the receipt of such request request the secretary of the State Board of Health to make an examination for the purpose of this act and his certificate as to the condition of the person or persons with reference to their rights to benefit under this act shall be conclusive evidence as to his condition.

Refusal of Workmen to Submit to Examination.

Section 8. If the workman refuses to submit himself to such examination, or in any way obstruct the same, his right to compensation under this act shall be suspended until such examination takes place, and shall absolutely cease unless he submits himself to an examination within one month after being required to do so.

Settlement of Monthly Allowances in Monthly Sums.

Section 9. When any monthly payment has been made to a workman for any period whatever, the liability under this act, may on the application by, or on behalf of the workman, be redeemed by the payment of a lump sum, which in no instance shall be in excess of the amount specified as death indemnity, and all monthly payments made prior shall be deducted from such settlement.

Powers and Duties of State Auditor—Report to Governor.

Section 10. The Auditor of state shall report in January of each year to the Governor of the experience and business of this function of his department, and shall have plenary power to determine all disputed cases which may arise in its administration not herein provided for, and to recommend in his report the rates or premium necessary in order to preserve such fund, and shall order paid such indemnification as herein provided. He shall have power to define the insurance provisions of this act by regulations not inconsistent therewith and shall prescribe the character of the monthly or other reports required of the parties liable hereunder and the character of the proofs of deaths, or to total permanent disability, and shall have power to make all other orders and rules necessary to carry out the true intent of this act.

Exemption of Insurance Money—Release of Employer from Liability.

Section 11. No money paid or payable in respect of insurance or monthly compensation under this act shall be capable of being assigned, charged, taken into execution, or attached, nor shall the same pass to any other person by operation of law; and the acceptance of pecuniary benefit under the provisions of this act shall operate to release the person or persons, corporation, partnerships, or associations causing such injuries or death for which benefits are so claimed, who shall have paid the assessment provided in section 2 of this act, and also the employer, officers and agents thereof from all liability and claim arising from such injuries or death. The commencement of a suit to recover for such injuries or death shall operate as a forfeiture of the right to benefit under this act.

Violations of Act—Penalty.

Section 12. A manager, agent, foreman, accountant, person or persons who represent any corporation, partnership, association, person or persons, engaged in the mining or managing of any coal mines or coal washers in Montana, or person or persons liable for the payments herein provided for who shall violate the intent of this act by inaccurate reports of tonnage of coal produced by them, or the earnings of employees in their employ, or who in any manner hinders or obstructs the Auditor of state in ascertaining facts bearing upon any case provided for in this act or who may refuse correctly to make out such reports as are required by this act, or as requested by the Auditor of state, or submit to its provisions, when liable therefor, or who shall fraudulently obtain benefits hereunder, shall be fined for each offense the sum of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars and imprisonment in the county jail for a period of not less than one month nor more than six months, or by both such fine and imprisonment.

The proceeds of all fines shall be forwarded to the State Treasurer and by him credited to the insurance fund.

Section 13. This act to be in full force and effect from and after the first day of October, 1910, benefits to commence four months thereafter.

Approved March 4, 1909.

Under the act, the duty imposed upon the employer to make payments as provided in section 2 is absolute and unconditional, and can be enforced by appropriate action, but after complying with the terms

of the act he is not exonerated from liability; he may still be sued and compelled to pay damages in a proper case. No provision is made for reimbursement wholly or in part. The injured employees of one op-

erator may all resort to the indemnity fund while those of another may elect to appeal to the courts, the result being that the employer against whom an action is successfully prosecuted is compelled to pay twice. He has already paid in full his assessments under the act and is now obliged to pay

damages. The act in this regard is not only inequitable and unjust, but clearly illegal and void, as not affording such employer the equal protection of the laws. *Cunningham v. Northwestern Impr. Co.*, 44 Mont. 196, 119 Pac. 554.

ASSIGNMENT OF WAGES.

Chapter 56, Laws 1911, page 92.

"An act defining and relating to wage brokers; regulating assignment of wages and salaries as security for loans; and fixing a maximum rate of interest for loans upon wages and salaries, and providing penalties for violation thereof."

Be it enacted by the Legislative Assembly of the State of Montana:

Wage Brokers to Procure License and Give Bond.

Section 1. From and after the passage of this act, no person, company, corporation, or association, shall establish or conduct the business of wage broker within the state of Montana, unless such person, company, corporation or association, shall have first procured a license from the proper authorities as hereinafter provided, and shall have executed a bond in such sum as said authorities may require for the faithful carrying out of the provisions of this act, and of the ordinances of any town or city in which such business may be carried on.

Issuance of License and Amount Thereof.

Section 2. The Board of County Commissioners of any county in this state, or, in case said business be carried on in any incorporated city or town, the City Council or Board of Trustees of said city or town, may in their discretion from time to time, grant license to any person or persons, company, corporation, or association to conduct or carry on the business of wage broker upon payment of such sum thereof and upon such terms and conditions as the said board of County Commissioners or City Council or Board of Trustees shall by resolution or ordinance require.

Wage Broker Defined.

Section 3. Any person, company, corporation, or association parting with, giving or loaning money, either directly or indirectly to any employee, or wage-earner, upon the security of, or in consideration of any assignment or transfer of wages or salary of such employee, or wage-earner, shall be deemed to be a wage broker within the meaning of this act.

Manner of Assignment of Wages or Salary.

Section 4. No assignment of his or her wages or salary by any employee or wage-earner to any wage broker for his or her benefit shall be valid or enforceable, nor shall any employer or debtor recognize or honor such assignment for any purpose whatever, unless it be for a fixed and definite part or all, of the wages or salary theretofore earned.

Editorial Notes.

Validity of statute making assignment of wages invalid except under pre-

scribed conditions. Ann. Cas. 1913B, 531.

Interest on Loan—Amount and Computation.

Section 5. No wage broker shall ask, demand or receive, either as compensation or interest, or in any other manner, directly or indirectly, any compensation or interest for the use of money advanced or loaned by him to any employee or wage-earner in excess of twelve per cent per annum, and said compensation or rate of interest shall be computed upon the amount actually advanced to, and received by, the employee or wage-earner and shall include all commissions or compensation whatsoever to the wage broker or any other person for making or procuring said loan.

Wife must Join in the Assignment of Wages—Acknowledgment.

Section 6. No assignments of his wages or salary to a wage broker by a married man, who shall have a wife, residing in this state, shall be valid or enforceable without the consent of his wife evidenced by her signature to said assignment executed and acknowledged before a notary public or other officer empowered to take acknowledgments, and no wage broker or person connected with him directly or indirectly shall be authorized to take any such acknowledgments.

Notice to Employer of Assignment.

Section 7. No assignment of wages or salary to a wage broker shall be valid or enforceable unless notice in writing of the same accompanied by a copy of the assignment shall be given to the employer within one day from the date of its execution; and all assignments shall be filed in the office of the county clerk of the county where the assignor resides, and no assignment shall be valid unless so filed.

Assignment to be Considered a Loan.

Section 8. Every purchase by a wage broker of an assignment of the wages or salary of any employee or wage-earner, shall be held and considered a loan, in the sum of the amount, actually paid to and received by such employee or wage-earner, and shall be subject to all the provisions of this act.

Violation of Act a Misdemeanor.

Section 9. Any person, company, corporation or association and any officer, member, agent or employee thereof violating any or either of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall be liable to a fine in the sum of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars for each offense, or to imprisonment in the county jail for a period of not to exceed ninety days, or both.

Note or Instrument Contrary to This Act is Void.

Section 10. Any note, bill or other evidence of indebtedness and any assignment of wages or salary given to or received by any wage broker in violation of any of the provisions of this act shall be void, as against the creditors of the assignor or transferor.

All acts and parts of acts in conflict herewith are hereby repealed.

This act shall take effect and be in force from and after its passage and approval.

Approved February 27, 1911.

PAYMENT FOR CONSIGNMENTS OF ORE.

Chapter 37, Laws 1911, page 66.

An act prescribing the time within which every person, association, company, or corporation, engaged in purchasing, smelting, milling, or otherwise preparing ores, minerals or metals for market, for others shall settle with and pay to the consignors thereof the amounts due thereon, and prescribing penalties for the violation of this act.

Be it enacted by the Legislative Assembly of the State of Montana:

Time for Settlement for Purchase of Ores by Smelters and Reduction Works.

Section 1. That every person, association, company or corporation, engaged within this state in purchasing ores, minerals, or metals from, or in smelting, milling or otherwise reducing or preparing the same for market for any other person, or persons, association, company, or corporation shall within twenty days after any such ores, minerals or metals shall have arrived at his, their or its smelter, mill, reduction works, yards or other place for receiving such ores, minerals or metals, make full settlement with and payment of the amount due to the consignor, or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ or process of a court of competent jurisdiction. That every such person, association, company, or corporation, to whom or to which any such ores, minerals or metals have heretofore been shipped and delivered, and for which settlement and payments have not been made or had, shall, within twenty days after this act takes effect, make full settlements and payments therefor to, and with the consignor or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ or process of a court of competent jurisdiction.

Violation of Law a Misdemeanor.

Section 2. That any person, association, company or corporation, violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars, nor less than five hundred dollars.

Section 3. This act shall take effect and be in force from and after its passage and approval.

Approved February 20, 1911.

ACCURACY IN SAMPLING OF ORES.

Chapter 54, Laws 1909, page 60.

“An act to insure accuracy in the sampling of ores.”

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Any person, association or corporation engaged in the business of buying or sampling or smelting for hire ores of gold, silver, copper, lead, zinc, iron or other valuable metal, shall maintain a sampling room or house to which the ore shippers, their agents, or representatives, shall have access at all times during the sampling of ores, or while the same is being carried on, and in which shall be samples of all ores he or they may buy or smelt.

Section 2. Every such person, association or corporation which shall buy any ores upon any agreement to pay for the same in amount dependent upon the metallic contents of the same, or smelt any ore, shall retain from the pulp or crushed ore, as the same is sampled, an amount selected regularly and at equal intervals from any lot of ore so brought or to be smelted, a quantity not less than fifty pounds (50) out of each ton of such ore, and shall keep the same separate and apart from any other ores or pulp for a period of thirty days or until full settlement is made and accepted by the shipper and until such settlement is made and accepted, the ore shipper, his agents, or representatives, shall be entitled to take from the quantity so retained any part thereof for the purpose of sampling or assaying the same; providing that the value of any part so taken by such owner or shipper may be deducted from the total value of the ore delivered by him.

Section 3. Any person who shall with intent to defraud in any manner, introduce into any ore or commingle with any ores intended for sale in any smelter or with any person, association or corporation shall have undertaken for hire to smelt ore into any sample retained for test or assays as in the next preceding section provided, in any manner whatever shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a period of not less than sixty days, nor more than twelve months or by both such fine and imprisonment.

Section 4. All acts and parts of acts in conflict with this act are hereby repealed.

Section 5. This act shall be in force and effect from and after its passage and approval by the Governor.

Approved March 3, 1909.

UMPIRE ASSAYERS.

Chapter 115, Laws 1909, page 162.

"An act to provide for the selection of umpire assayers within this state and providing penalties for the violation thereof."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Any person, association or corporation engaged in the sampling of ores with intent to purchase or smelt the same whether for themselves or as the agent or agents for other purchasers shall, on or before the tenth day of April, 1909, choose an assayer or assayers who, for at least one year prior to the passage of this act, shall have operated an assay office or chemical laboratory within this state, and to such selected assayer or assayers shall be submitted all samples of ore, sampled by such person, association or corporation, over which there is a dispute as to metallic contents or value, between the buyer or sampler and the seller of such ore. Said chosen assayer or assayers shall be known as the umpire or umpires for such person, association or corporation.

Section 2. Upon the selection of such assayer or assayers who shall be actively engaged in the assaying business in this state, every person, association or corporation selecting the same shall, within ten days after such choice is made, post a notice of such choice in which shall appear the name of the assayer or assayers so selected, in a conspicuous place within and

without the room or house where the sampling of ores is carried on by such person, association or corporation.

Section 3. Every person, association or corporation engaged in the sampling of ores belonging to others who fails to comply with the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars nor less than five hundred dollars.

Section 4. All acts and parts of acts in conflict with this act are hereby repealed.

Section 5. This act shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 8, 1909.

UNLAWFUL TRUSTS AND MONOPOLIES.

Chapter 97, Laws 1909, page 127.

An act relating to trusts, monopolies and unlawful contracts and combinations in restraint of trade, commerce, and transportation facilities and fixing the punishment for infractions of the provisions thereof.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Every person, corporation, stock company or association of persons in this state who, directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporation or stock companies, foreign or domestic, through their stockholders, directors, officers, or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce,—“The phrase ‘articles of commerce’ as herein employed shall and does include not only those articles which are generally, popularly and legally known as articles of commerce, but also gas, water, water-power, electric light and electric-power for whatever purpose used or employed”—or of the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce or product, intended for sale, use or consumption, will be in any way controlled, or to create a monopoly in the manufacture, sale or transportation of any such article or to enter into an obligation by which they shall bind others or themselves not to manufacture, sell, or transport any such articles below a common standard or figure or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article, so as to preclude unrestricted competition, is punishable by imprisonment in the county jail for a period not less than twenty-four hours, or more than one year, or by fine not exceeding twenty-five thousand dollars, or both.

Section 2. The provisions of this act do not apply to any arrangements, agreement, or combination between laborers, made with the object of lessening the number of hours of labor or increasing wages.

Section 3. No person shall be excused from testifying in any prosecution brought pursuant to the provisions of this act, but no person testifying for the prosecution shall be punished or prosecuted in any manner whatsoever for any act committed by him personally, as to which he is called

upon to testify in a prosecution against any person or corporation, stock company or association.

Section 4. All acts and parts of acts in conflict with this are hereby repealed.

Section 5. This act shall be in full force and effect from and after its passage and approval.

Approved March 6, 1909.

Editorial Notes.

Unlawful combinations in restraint of trade at common law. Ann. Cas. 1914A, 430.

UNFAIR COMPETITION AND DISCRIMINATION.

Chapter 7, Laws 1913, page 6.

A bill for an act entitled: "An act to prohibit unfair competition and discrimination, and providing a penalty for the infraction of the provisions thereof."

Be it enacted by the Legislative Assembly of the State of Montana:

What Constitutes Unfair Competition or Discrimination in Sale of Commodities.

Section 1. Any person, firm or corporation, foreign or domestic, doing business in the state of Montana, and engaged in the production, manufacture, or distribution of any commodity in general use, that intentionally, for the purpose of destroying the competition of any regularly established dealer in such commodity, or to prevent the competition of any person, firm or corporation who in good faith intends and attempts to become such dealer, shall discriminate between different sections, communities or parts of this state, by selling such commodity at a lower rate or price in one section, city or community, or any portion thereof, than such person, firm or corporation, foreign or domestic, charges for such commodity in another section, community or city, after equalizing the distance from the point of production, manufacture or distribution and freight rates therefrom, shall be deemed guilty of unfair discrimination.

Prosecutions by Attorney General.

Section 2. If complaint shall be made to the Attorney General that any corporation is guilty of unfair discrimination as defined by this act, he shall forthwith investigate such complaint, and for that purpose he shall subpoena witnesses, administer oaths, take testimony and require the production of books or other documents, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this state, and if in such action the court shall find that such corporation is guilty of unfair discrimination as defined by this act, such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this state.

Penalty for Violation of Law.

Section 3. Any person, firm or corporation, violating the provisions of section one (1) of this act, whether as principal or agent, shall, upon

conviction thereof be fined not less than two hundred (200) dollars nor more than ten thousand (10,000) dollars, for each offense.

Section 4. Nothing in this act shall be construed as repealing any other act or part of an act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

Section 5. This act shall take effect and be in force from and after its passage and approval.

Approved February 6, 1913.

UNFAIR COMPETITION AND DISCRIMINATION.

Chapter 8, Laws 1913, page 7.

A bill for an act entitled: "An act to prohibit unfair competition and discrimination, and providing a penalty for infraction of the provisions thereof."

Be it enacted by the Legislative Assembly of the State of Montana:

Unfair Competition or Discrimination in Buying Commodities Defined.

Section 1. Any person, firm or corporation, foreign or domestic, doing business in the state of Montana, and engaged in the buying, selling, production, manufacture or distribution of any commodity in general use, that intentionally, for the purpose of destroying the competition of any regularly established dealer in such commodity, or to prevent the competition of any person, firm or corporation, who in good faith intends and attempts to become such dealer, shall discriminate between different persons, sections or communities in, or parts of this state by buying such commodity at a higher rate or price in one section, city or community, or any portion thereof, than such person, firm or corporation, foreign or domestic, pays for such commodity in another section, community or city, after equalizing the distance from the point of production, manufacture or distribution and freight rates therefrom, shall be deemed guilty of unfair discrimination.

Prosecutions by Attorney General.

Section 2. If complaint shall be made to the Attorney General that any corporation is guilty of unfair discrimination as defined by this act, he shall forthwith investigate such complaint, and for that purpose he shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this state; and if such action the court shall find that such corporation is guilty of unfair discrimination as defined by this act, such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this state.

Penalty for Violation of Law.

Section 3. Any person, firm or corporation violating the provisions of section 1 (1) of this act, whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred (\$200) dollars, nor more than ten thousand (\$10,000), for each offense.

Section 4. Nothing in this act shall be construed as repealing any other act or part of an act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

Section 5. This act shall take effect and be in full force from and after its passage and approval.

Approved February 6, 1913.

COMMISSION FORM OF GOVERNMENT.

Chapter 57, Laws 1911, page 94; amended, Laws 1915, page 3.

"An act providing for a commission form of government for cities, providing for the election of officers therein, defining their duties and powers and providing for their compensation."

Be it enacted by the Legislative Assembly of the State of Montana:

Any City may Reorganize Under Commission Form.

Section 1. Any city may abandon its organization and reorganize under the provisions of this act, by proceeding as hereinafter provided.

Submission of Question to Electors—Petition and Order of Election.

Section 2. Upon a petition being filed with the city council, signed by not less than twenty-five per cent of the qualified electors of such city registered for the last preceding general city election, praying that the question of reorganization under this act be submitted to the qualified electors of such city, said city council shall thereupon and within thirty days thereafter, order a special election to be held, at which election the question of reorganization of such city, under the provisions of this act shall be submitted to the qualified electors of such city.

Such order of the city council shall specify therein the time when such election shall be held, which must be within ninety days from the date of the filing of such petition. [Amendment approved February 1, 1915; Laws 1915, p. 3.]

Proclamation of Election.

Section 3. Upon the city council ordering such special election to be held, the mayor of such city shall issue a proclamation setting forth the purpose for which such special election is called, and the date of holding such special election, which proclamation shall be published for ten consecutive days in each daily newspaper published in said city, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and such proclamation shall also be posted in at least five public places within such city.

Ballots—Form.

Section 4. At such election the ballots to be used shall be printed upon plain, white paper, and shall be headed "Special election for the purpose of submitting to the qualified electors of the city of . . . the question of reorganization of the city of . . . under chapter (name of chapter containing this act) of the acts of the Twelfth Legislative Assembly," and shall be substantially in the following form:

For reorganization of the city of . . . under chapter (name of chapter containing this act) of the acts of the Twelfth Legislative Assembly.

Against reorganization of the city of under chapter (name of chapter containing this act) of the acts of the Twelfth Legislative Assembly.

Such election shall be conducted and vote canvassed and result declared in the same manner as provided by law in respect to other city elections.

Certificate of Result of Election—No Further Election for Two Years.

Section 5. If such proposition is adopted, the mayor shall transmit to the Governor, to the Secretary of State and to the county clerk and recorder, each a certificate stating that such proposition was adopted.

If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such city within a period of two (2) years thereafter.

Calling of Election to Elect City Officers.

Section 6. If a majority of the votes cast at such election shall be in favor of such proposition, the city council must, at its first regular meeting held thereafter, order a special election to be held for the purpose of electing a mayor and the number of councilmen to which such city shall be entitled, which order shall specify the time of holding such election which must be within ninety days after the making of said order, and the mayor shall thereupon issue a proclamation setting forth the purposes for which such special election is called and the day of holding the same, which proclamation shall be published for ten successive days in each daily newspaper published in such city, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and a copy thereof shall also be posted at each voting place within said city, and also in at least ten of the most public places in said city. [Amendment approved February 1, 1915; Laws 1915, p. 4.]

Manner of Conducting Election—Canvassing Votes.

Section 7. Such election shall be conducted, the vote canvassed and result declared in the same manner as provided by law in respect to other city elections.

Laws Governing City—Ordinances—Territorial Limits and Property.

Section 8. All laws governing cities of the first, second and third classes and not inconsistent with the provisions of this act, shall apply to and govern cities organized under this act. All by-laws, ordinances and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this act. The territorial limits of such city shall remain the same as under the former organization and all rights and property of every description which were vested in any such city under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind shall be affected by such change, unless otherwise provided for in this act.

Number of Councilmen—Vacancies and How Filled.

Section 9. In every city of the third class, there shall be a mayor and two councilmen; in every city of the second class, a mayor and two councilmen; in every city of the first class having a population of less than twenty-five thousand, a mayor and two councilmen, and in every city of the first

class having a population of twenty-five thousand or more, a mayor and four councilmen, and the mayor and all councilmen shall be elected at large.

If any vacancy shall occur in the office of mayor or councilman, the remaining members of the council shall by majority vote, elect a person to fill such vacancy until the next general city election, and if, in filling such vacancy, a tie vote should occur, then the person to fill said vacancy shall be determined by lot in such manner as said council may provide.

Beginning of Term of Office.

Section 10. The mayor and councilmen elected at such special election shall qualify and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the term of office of the councilmen first elected under the provisions of this act shall then cease and determine, and the terms of office of all their appointed officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

Tenure of Office—Expiration of Term.

Section 11. The terms of office of the mayor and all councilmen elected at such special election, shall expire on the first Monday in May of the year following their election. At the first regular city election held in the year in which the terms of office of the mayor and councilmen elected at such special election shall expire, a mayor and two councilmen shall be elected in cities having a population of less than twenty-five thousand. The mayor elected at such first general city election shall hold office for two years; one of the councilmen elected at such first general city election shall hold office for one year, and the other of such councilmen elected at such first general city election, shall hold office for two years, beginning with the first Monday in May of that year; a mayor and four councilmen shall be elected in cities having a population of twenty-five thousand or more; and the mayor elected at such first general city election shall hold office for two years. Two of the councilmen elected at such first general city election shall hold office for one year and the other two of the councilmen elected at such first general city election shall hold office for two years, beginning with the first Monday in May of that year; and the terms of office of the mayor and all councilmen thereafter elected shall be two years.

The councilmen elected at the first general city election shall decide by lot in such manner as they may select, which thereof shall hold the office of councilman the term of which expires one year thereafter, and which thereof shall hold the office of councilman the term of which expires two years thereafter.

Nomination of Candidates—Primary Election.

Section 12. Candidates to be voted for at all general municipal elections at which a mayor or councilmen are to be elected under the provisions of this act, shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nominations shall be held on the second Monday preceding the municipal election. The judges of election appointed for the municipal election shall be the judges of the primary election, and it shall be held at the same places, as far as possible, and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election.

Any qualified elector of said city who is the owner of any real estate situated therein, desiring to become a candidate for mayor or councilman, shall, at least ten days prior to said primary election, file with the city clerk, a statement of such candidacy in substantially the following form:

State of Montana,
County of } ss.

being first duly sworn, say that I reside at street, city of, county of, state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held on the, Monday of, 19.., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

Signed

Subscribed and sworn to (or affirmed) before me by on this day of, 19...

Signed

And shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

Petition Accompanying Nominating Statement.

The undersigned, duly qualified elected electors of the city of, and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the Monday of, 19... We further state that we know him to be a qualified elector of said city and a man of good moral character, and qualified, in our judgment, for the duties of such office.

Names of Qualifying Electors.	Number.	Street.
.....
.....

Each signer of a nomination paper shall sign but one such nomination paper for the same office, except where more than one officer is to be elected to the same office, in which case he may sign as many nomination papers as there are officers to be elected, and only one candidate shall be petitioned for or nominated in the same nomination paper.

Immediately upon the expiration of the time of filing the statements and petitions for candidates the said city clerk shall cause to be published for three consecutive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspaper that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name, and immediately below the words "Vote for one." Following these names, likewise arranged in alphabetical order, shall ap-

pear the names of the candidates for councilmen, with a square at the left of each name, and below the names of such candidates shall appear the words, "Vote for (giving the number of persons to be voted for)." The ballots shall be printed upon plain, substantial, white paper, and shall be headed:

Candidates for Nomination for Mayor and Councilmen of the City of
at the
Primary Election.

but shall have no party designation or mark, whatever. The ballots shall be in substantially the following form: (Place a cross in the square preceding the names of the parties you favor as candidates for the respective positions.)

Official Primary Ballot.

Candidates for Nomination for Mayor and Councilmen, of the city or
at the
Primary Election.

For Mayor.

(Name of Candidate.)

(Vote for One.)

For Councilman.

(Name of Candidate.)

(Vote for) (Giving number to be voted for.)

Official ballot attest:

(Signature),
City Clerk.

Having caused said ballots to be printed, the said city clerk shall cause to be delivered at each polling place a number of said ballots equal to twice the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election shall be qualified to vote at such primary election, and any person offering to vote may be orally challenged by any elector of the city upon any or all of the grounds set forth and specified in section 562 of the Revised Codes of Montana of 1907, and the provisions of sections 563, 564, 565, 566, 567, 568, 569 and 570 of the Revised Codes of Montana of 1907, shall apply to all challenges made at such election. Judges of election shall immediately upon the closing of the polls count the ballots and ascertain the number of votes cast in such precinct for each of the candidates, for mayor and councilman, and make return thereof to the city clerk upon the proper blanks to be furnished by the city clerk within six hours of the closing of the polls. On the day following the primary election the city clerk shall canvass said returns so received from all the polling precincts and shall make and publish in all the newspapers in said city, at least once, the result thereof. Said canvass by the city clerk shall be made publicly. If a mayor is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for mayor. If one councilman is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for councilmen. If two councilmen are to be elected at such general municipal

election, the four persons receiving the highest number of votes shall be the candidates for councilmen, and if three councilmen are to be elected at such municipal election, the six persons receiving the highest number of votes shall be the candidates for councilmen and if four councilmen are to be elected at such general municipal election, the eight persons receiving the highest number of votes shall be candidates for councilmen at such general election, and these shall be the only candidates for mayor and councilmen at such general election.

All electors of cities under this act, who, by ordinances governing cities incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this act; and the ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable, and in all elections in such cities the election precincts, voting places, method of conducting the elections, canvassing of votes and announcing the results shall be the same as by law provided for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this act.

Every person who has been declared elected mayor or councilman, shall within ten (10) days thereafter take and file with the city clerk his oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in the sum of ten thousand (\$10,000) dollars, conditioned for the faithful performance of the duties of his office, which bond shall be approved by the judge of the district court of the county in which such city is situated and filed with the clerk and recorder of the county in which such city is situated.

Working for Candidate Forbidden.

Section 13. Any person who shall agree to perform any services in the interest of any candidate for any office provided in this act, in consideration of any money or other valuable thing for such services performed in the interest of any candidate shall be punished by a fine not exceeding three hundred (\$300) dollars or be imprisoned in the county jail not exceeding thirty days.

Bribery—False Answers Concerning Qualifications of Elector—Voting by Disqualified Person.

Section 14. Any person offering to give a bribe, either in money or other consideration, to any elector, for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election who has not been a resident of this state for one year next preceeding said election, or who is not twenty-one years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding or abetting any violation hereof shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined a sum

of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars; and be imprisoned in the county jail not less than ten nor more than ninety days.

Mayor and Councilmen, Right to Vote.

Section 15. Every city shall be governed by a mayor and councilmen, as provided in section 9 of this act, each of whom shall have the right to vote on all questions coming before the council.

Quorum of Councilmen—Recording Votes and Proceedings.

Section 16. In cities having a mayor and two councilmen, the mayor and one councilman or two councilmen shall constitute a quorum; and the affirmative vote of the mayor and one councilman or the affirmative vote of two councilmen shall be necessary to adopt or reject any motion, resolution or ordinances, or pass any measure unless a greater number is provided for in this act.

In cities having a mayor and four councilmen, the mayor and two councilmen, or three councilmen, shall constitute a quorum, and the affirmative vote of the mayor and two councilmen or the affirmative vote of three councilmen, shall be necessary to adopt or reject any motion, resolution, or ordinances, or pass any measure unless a greater number is provided for in this act.

Upon every vote the ayes and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing and read before the vote is taken thereon.

Rights and Powers of Mayor—Approval of Measures.

Section 17. The mayor shall preside at all meetings of the council; he shall have the same power to vote as other members of the council; he shall have no power to veto any measure, but every resolution or ordinance passed by the council must be signed by the mayor, or by two councilmen, and must be recorded before the same shall be in force.

Powers of Council—Departments of Government.

Section 18. The council shall have and possess and the council and its members shall exercise all executive, legislative, and judicial powers and duties now had, possessed and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, board of library trustees, attorney, assessor, treasurer, auditor, city engineer and other executive and administrative offices in cities organized under the general municipal incorporation laws.

The executive and administrative powers, authority and duties in such cities shall be distributed into and among departments as follows:

In cities having a mayor and two councilmen, into three departments:

First. A department of accounts, finance and public property.

Second. A department of public safety and charity.

Third. A department of streets, public improvements and parks.

In cities having a mayor and four councilmen, into five departments:

First. A department of public affairs.

Second. A department of accounts and finance.

Third. A department of public safety and charity.

Fourth. A department of street and public improvements.

Fifth. A department of parks, and public property.

The council shall determine the powers and duties to be performed by each department of the city; shall prescribe the powers and duties of officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments; and may make such rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city.

Supervisory Powers of Mayor and Councilmen—Election and Removal of Officers—Police Judge.

Section 19. In cities having a mayor and two councilmen, the mayor shall be superintendent of the department of accounts, finance and public property, and in cities having a mayor and four aldermen, the mayor shall be superintendent over the department of public affairs, and the mayor shall have general supervision over all departments of the city and over all matters connected with said city, and the council shall, at its first regular meeting after the election of its members, designate by majority vote, one councilman to be superintendent over each department of the city, but such designation may be changed whenever it appears that the public service would be benefited thereby.

The council shall at its first regular meeting after the election of its members, or as soon thereafter as practicable, elect by majority vote the following officers: A city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and such other officers and assistants as shall be provided for by ordinance, and which may be necessary to the proper and efficient conduct of the affairs of the city; provided, however, that the council may, by ordinance, consolidate any of the offices the election to which is made by the council, and may require any officer elected by the council to perform the duties of any other officer; and shall appoint a police judge, with the authority now conferred by existing laws. Any officer or assistant, elected or appointed by the council, may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this act.

Creation or Discontinuance of Other Offices—Compensation.

Section 20. The council shall have power from time to time to create, fill and discontinue offices and employment other than herein prescribed, according to their judgment of the needs of the city, and by majority vote of all the members, remove any such officer or employee except as otherwise provided for in this act; and may, by resolution or otherwise, prescribe, limit, or change the compensation of such officers or employees.

Place of Office of Councilmen—Salaries and Compensation.

Section 21. The council shall have their office at the city hall, and their total compensation shall be as follows: In cities of the third class, having a population of less than three thousand, the annual salary of the mayor shall be six hundred dollars, and the annual salary of each councilman shall be five hundred dollars; in cities of the third class having a population of three thousand or more, the annual salary of the mayor shall be one thousand dollars, and the annual salary of each councilman shall be nine hundred dollars; in cities of the second class, the annual salary of the

mayor shall be one thousand six hundred and fifty dollars, and the annual salary of each councilman shall be one thousand five hundred dollars; in cities of the first class having a population of less than thirty thousand, the annual salary of the mayor shall be three thousand dollars, and the annual salary of each councilman shall be two thousand five hundred dollars; in cities of the first class, having a population of thirty thousand and less than fifty thousand, the annual salary of the mayor shall be four thousand dollars, and the annual salary of each councilman shall be three thousand dollars; and in cities of the first class, having a population of fifty thousand or more, the annual salary of the mayor shall be four thousand five hundred dollars, and the annual salary of each councilman shall be three thousand five hundred dollars.

Any increase in salary occasioned by the advance in class or increase in population of any city, shall commence with the month next after the official publication of the census showing such advance in class or increase in population.

Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance from time to time provide, payable in equal monthly installments.

The salary or compensation of all other employees of such city shall be fixed by the council and shall be payable monthly, or at such shorter periods as the council shall determine.

Meetings of Council—Vice-president.

Section 22. Regular meetings of the council shall be held on the first Monday after the election of councilmen, and thereafter at least once each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two councilmen. All meetings of the council, whether regular or special, at which any person not a city officer is admitted, shall be open to the public.

The mayor shall be president of the council and shall preside at its meetings and shall supervise all departments of the city and report and recommend to the council for its action, all matters requiring attention in any department. The council shall, at its first regular meeting, select one of its members for vice-president of the council and in case of a vacancy in the office of mayor, or the absence, or inability of the mayor, he shall perform the duties of the mayor.

Ordinances and Franchises—How Adopted or Granted.

Section 23. Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges or public places in any such city shall be granted, renewed or extended, except by ordinance, and every franchise or grant for interurban or street railways, gas or waterworks, electric light, or power plant, heating plant, telegraph or telephone systems, or other public service utilities, or renewal or extension of any such franchise or grant within such city, must be authorized or approved by a majority of the elec-

tors voting thereon at a general or special election, as provided in sections 3291, 3292 and 3293, Revised Codes of Montana, 1907.

Officers not to be Interested in Contracts nor Receive Passes nor Do Electioneering.

Section 24. No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or materials, supplies or services to be furnished or performed for the city; and no such officer or employee shall be interested directly or indirectly, in any contract or job for work or materials or the profits thereof, or services to be furnished or performed for any person, firm or corporation operating interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange or other public utility within the territorial limits of said city. No such officer or employee shall accept or receive directly or indirectly from any person, firm or corporation operating within the territorial limits of said city, any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line or telephone exchange or other business using or operating under a public franchise, any frank, free pass, free ticket, or free service, or accept or receive, directly or indirectly from any such person, firm or corporation, any other service upon terms more favorable than is granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor, and every such contract and agreement shall be void.

Such prohibition of free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section. Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence directly or indirectly, to influence other officers or employees of such city to adopt his political views or to favor any particular person or candidate for office, or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding three hundred dollars or by imprisonment in the county jail not exceeding thirty days.

Civil Service.

Section 25. Immediately after organizing, the council shall, by ordinance, appoint three civil service commissioners, who shall hold office, one until the first Monday in April in the second year, one until the first Monday in April in the fourth year, and one until the first Monday in April of the sixth year after his appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one commissioner for six years, who shall take the place of a commissioner whose term of office expires. The chairman of the commission for each biennial period shall be the member whose term first expires. No person while on the said commission shall hold or be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than three years next preceding their appointment.

The council may remove any of said commissioners during their term of office for cause, a majority of councilmen voting in favor of such re-

moval, and shall fill any vacancy that shall occur in said commission for the unexpired term. The city council shall provide suitable rooms in which the said civil service commission shall hold its meetings; they shall have a clerk, who shall keep a record of all its meetings, such city to supply the said commission with all necessary equipment to properly attend to such business.

(A) Before entering upon the duties of their office, each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the Constitution of the United States and of the state of Montana, and to obey the laws, and to aid to secure and maintain an honest and efficient force, free from partisan distinction or control, and to perform the duties of his office to the best of his ability.

(B) Said commission shall, on the first Monday of April and October of each year, or oftener if it shall be deemed necessary, under such rules and regulations as may be prescribed by the council, hold examinations for the purpose of determining the qualifications of applicants for positions, which examination shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Such commission shall as soon as possible after such examination, certify to the council double the number of persons necessary to fill vacancies, who, according to the records, have the highest standing for the position they seek to fill as a result of such examination, and all vacancies which occur that come under the civil service, prior to the date of the next regular examination, shall be filled from said list so certified; provided, however, that should the list for any cause be reduced to less than three for any division, then the council or the head of the proper department may temporarily fill a vacancy but not to exceed thirty days.

(C) All persons subject to such civil service examination shall be subject to removal from office or employment by the council for misconduct or failure to perform their duties under such rules and regulations as it may adopt, and the chief of police, chief of the fire department or any superintendent or foremen in charge, of municipal work may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders, but shall, within twenty-four hours thereafter, report such suspension or discharge, and the reason therefor, to the superintendent of his department who shall thereupon affirm or revoke such discharge or suspension, according to the facts. Such employee (or the officer discharging or suspending him) may, within five days of such ruling, appeal therefrom to the council, which shall fully hear and determine the matter.

(D) The council shall have the power to enforce the attendance of witnesses, the production of books and papers, and power to administer oaths in the same manner and with like effect, and under the same penalties, as in the case of magistrates exercising criminal or civil jurisdiction under the statutes of Montana.

Said commissioners shall make an annual report to the council, and it may require a special report from said commissioner, at any time; and said council may prescribe such rules and regulations for the proper conduct of the business of the said commission as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employees, certificates of records to the auditors, and restrictions on payment to persons improperly employed.

(E) The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this act relating to the civil service commission.

(F) The provisions of this section shall apply to all appointive officers and employees of such city, except those especially named in section 19 of this act, commissioners of any kind, laborers whose occupation requires no special skill nor fitness, election officials and mayor's secretary and assistant attorney, where such officers are appointed."

All officers and employees in any such city shall be elected or appointed with reference to their qualifications and fitness, and for the good of the public service, and without reference to their political faith or party affiliations.

It shall be unlawful for any candidate for office in any such city, directly or indirectly, to give or promise any person or persons, any office, position, employment, benefit or anything of value for the purpose of influencing or obtaining the political support, aid or vote of any person or persons.

Every elective officer in any such city shall, within thirty days after qualifying, file with the city clerk, and publish at least once in the daily newspaper of general circulation, or weekly, if there be no daily newspaper published, his sworn statement of all his election and campaign expenses, and by whom such funds were contributed.

Any violation of the provisions of this section shall be a misdemeanor and give ground for the removal from office.

Publication of Report by Council—Examination of Accounts.

Section 26. The council shall each month print in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the state library, the city library, the daily newspapers of the city, and to the persons who shall apply therefor at the office of the city clerk. At the end of each year the council shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of such examination in the manner above provided for publication of statements of monthly expenditure.

Revision of Appropriations Made by Former Council.

Section 27. If, at the beginning of the term of office of the first council elected in such city under the provisions of this act, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, repeal or change said appropriations and to make additional appropriations.

Rules for Construction of This Act—Definition of Terms.

Section 28. In the construction of this act the following rules shall be observed, unless such construction would be inconsistent with the manifest intent, or repugnant to the context of the statute:

First.—The words "councilman" or "alderman" shall be construed to mean "councilman" when applied to cities under this act.

Second.—When an office or officer is named in any law referred to in this act, it shall, when applied to cities under this act, be construed to mean the office or officer having the same function or duties under the provisions of this act, or under ordinances passed under authority thereof.

Third.—The words “franchise” or “right” shall include every special privilege in the streets, highways and public places of the city, whether granted by the state or the city, which does not belong to citizens generally by common right.

Fourth.—The word “electors” shall be construed to mean persons qualified to vote for elective offices at regular municipal elections.

Recall of Elective Officers.

Section 29. The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by twenty-five per cent of all qualified electors registered for the last preceding general municipal election, demanding an election of a successor of the person sought to be removed shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature his place of residence giving the street and number. One of the signers of such paper shall make oath before an officer competent to administer oaths that the statements therein are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing such petition the city clerk shall examine, and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient the council shall order and fix a date for holding said election, not less than seventy (70) days nor more than eighty (80) days from the date of the clerk's certificate to the council that a sufficient petition is filed.

The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned and the result thereof declared, in all respects as are other elections.

As far as applicable, except as otherwise herein provided, nominations hereunder shall be made without the intervention of a primary election by filing with the clerk at least ten days prior to said special election, a statement of candidacy accompanied by a petition signed by electors entitled to a vote at said special election equal in number to at least ten per cent of the entire number of persons registered to vote at the last preceding general municipal election, which said statement of candidacy and petition shall be substantially in the form set out in section 12 of this act, so far as the same is applicable substituting the word “special” for the word “primary” in such statement and petition, and stating therein that

such person is a candidate for election instead of nomination. The ballot for such special election shall be in substantially the following form:

Official Ballot.

Special election for the balance of the unexpired term of as for

(Vote for one only.)

(Name of candidates.)

Name of present incumbent.

Official ballot attest.

(Signature),

City Clerk.

The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election, if some other person than the incumbent receives the highest number of votes the incumbent shall thereupon be deemed removed from the office upon the qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of the election the office shall be deemed vacant. If the incumbent receive the highest number of votes, he shall continue in office. The said method of removal shall be cumulative, and additional to the methods heretofore provided by law. [Amendment approved February 1, 1915; Laws 1915, p. 4.]

Ordinances—How Submitted—Petition and Election.

Section 30. Any proposed ordinance may be submitted to the council by petition, signed by electors of the city equal in number to the percentage hereinafter required. The signature, verification, inspection, certification, amendment and submission of such petition shall be the same as provided for petition under section 29 hereof. If the petition accompanying the proposed ordinance be signed by electors equal in number to twenty-five per centum of the entire number of persons registered to vote at the last preceding general election, and contains a request that the said ordinance be submitted to a vote of the people, if not passed by the council, such council shall either—

(a) Pass each ordinance without alteration within twenty days after the attachment of the clerk's certificate to the accompanying petition, or—

(b) Forthwith, after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the council shall call a special election, unless a general municipal election is fixed by law within thirty days thereafter, and at such special or general municipal election, if one is so fixed, such ordinance shall be submitted to the vote of the electors of such city.

But if the petition is signed by not less than ten nor more than twenty-five per centum of the electors, as above defined, then the council shall, within twenty days, pass said ordinance without change, or submit the same at the next general city election occurring after the clerk's certificate of sufficiency is attached to said petition.

The ballots used when voting upon said ordinance shall contain these words: "For the ordinance" (stating the nature of the proposed ordinance), and "Against the ordinance" (stating the nature of the proposed ordinance). If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by the petition of which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people.

Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section; but there shall not be more than one special election in any period of six months for such purposes.

The council may submit a proposition for the repeal of any such ordinance or for amendments thereto, to be voted upon at any succeeding general city election; and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. Whenever any ordinance or proposition is required by this act to be submitted to the voters of the city at any election, the city clerk shall cause such ordinance or proposition to be published once in each of the daily newspapers published in such city, and if there be none, then one time in each weekly newspaper published therein; such publication to be not more than twenty or less than five days before the submission of such proposition or ordinance to be voted on.

Taking Effect and Suspension of Ordinances.

Section 31. No ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this act, except an ordinance for the immediate preservation of the public peace, health or safety, which contains a statement of its urgency, and is passed by a two-thirds vote of the council, shall go into effect before ten days from the time of its final passage; and if during said ten days a petition signed by electors of the city equal in number to at least twenty-five per centum of the entire number of persons registered to vote at the last preceding general municipal election, protesting against the passage of such ordinance, be presented to the council, the same shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such ordinance; and if the same is not entirely repealed, the council shall submit the ordinance, as is provided by subdivision (b) of section 30 of this act, to the vote of the electors of the city, either at a general election or at a special municipal election to be called for that purpose; and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of said section 30, except as to the percentage of signers, and be examined and certified to by the clerk in all respects as therein provided.

Abandonment of Commission Form.

Section 32. Any city which shall have operated for more than one year under the provisions of this act, may abandon such organization hereunder and accept the provisions of the general law of the state then applicable to cities of its population.

Upon the petition of not less than twenty-five per cent of the electors of such city registered for the last preceding general election, a special election shall be called, at which the following proposition only shall be submitted:

"Shall the city of (name the city) abandon its organization under chapter 57 of the Acts of the Twelfth Legislative Assembly and become a city under the general law governing cities of like population; or if formerly organized under special charter shall resume said special charter."

If the majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of such officers such city shall become a city under such general law of the state, but such change shall not in any manner or degree affect the property, rights or liabilities of any nature of such city but shall merely extend to each change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted and the results declared, generally as provided for by section 29 of this act, in so far as the provisions thereof are applicable; or if now organized under special charter, may resume said special charter. Whenever the form of government of any city is determined by a vote of the people under the provisions of this section, the same question shall not be submitted again for a period of two years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of two years. [Amendment approved March 18, 1913; Laws 1913, c. 128, p. 480.]

Petition for Abandonment.

Section 33. Petition provided for in this act shall be signed by none but legal voters of the city. Each petition shall contain in addition to the names of the petitioners, the street and house number in which the petitioner resides, his age and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city, stating that the signers thereof were, at the time of signing, legal voters of the city, and the number of signers at the time the affidavit was made.

Effect of This Act upon Existing Laws.

Section 34. All acts and parts of acts and all laws, now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as not repealed by this act, except in so far as the same may be in conflict or inconsistent with the provisions of this act.

Repeal of Conflicting Laws.

Section 35. All laws and parts of laws in conflict herewith are hereby repealed.

Time When Act Becomes Operative.

Section 36. This act shall become effective immediately upon its passage and approval.

Approved February 28, 1911.

The fact that the city has adopted a commission form of government, under the statute, does not render an ordinance or resolution the less indispensable to the creation of an improvement district therein. *Shapard v. City of Missoula*, 49 Mont. 280, 141 Pac. 544.

Editorial Notes.

Right of city to adopt commission form of government. *Ann. Cas.* 1912C, 999.

IMPROVEMENT DISTRICTS FOR LIGHTING STREETS.

Chapter 143, Laws 1915, page 351.

"An act authorizing the creation of special improvement districts for lighting streets in cities and towns and to assess not less than one-fourth and not more than three-fourths of the cost thereof against the property abutting thereon and the remainder of such cost against the city or town at large."

Be it enacted by the Legislative Assembly of the State of Montana:

Creation of Special Improvement Districts—Apportionment of Cost.

Section 1. The city or town council of any city or town is authorized to create special improvement districts embracing any street or streets or public highway therein or portions thereof and property abutting thereon, for the purpose of lighting such street or streets or public highway, and to require not more than three-fourths and not less than one-fourth of the cost of installing and maintaining such lighting system to be paid by the owners of the property abutting upon some portion of the street or streets or public highway embraced within such districts, including any street or other railway therein, and to assess and collect such portion of such cost by special assessment against said property.

Proportion to be Borne by Abutting Property—Street Railways.

Section 2. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps, and other suitable or necessary appliances for the purpose of lighting said streets or public highways, and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, not less than one-fourth nor more than three-fourths, as shall be determined by the city and town council, shall be borne by property embraced within said district abutting upon some portion of the street or public highway within such district to be lighted, each parcel of land so abutting to be assessed in the proportion which the street frontage of each parcel of land bears to the street frontage of the entire district to be lighted; and the owner of any street or other railway upon the street or public highway or portion thereof, within the district shall be assessed for such part of the entire cost and expense of such installation, electrical current and maintenance, not exceeding one-sixth thereof, as the city or town council may determine.

Resolution of Intention—Protests—Hearing—Public Property—Contracts for Work and Materials.

Section 3. Before creating any special improvement lighting district in any such city or town, for the purpose of lighting any street or streets or public highway, or section thereof, in accordance with the provisions of this act, the council shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boun-

daries thereof, and state therein the general character of the improvement or improvements which are to be made and an approximate estimate of the cost thereof; also an approximate estimate of the cost of maintaining such lights and supplying electrical current therefor for the first year, and the proportion of such cost to be assessed against the abutting property including such street or other railway.

Upon having passed such resolution, the council must give notice of the passage of such resolution of intention, which notice must be published for five days in a daily newspaper or in some one issue of a weekly newspaper in the city or town, or in case no newspaper be published in such city or town, then by posting for five days in three public places in the city or town, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation having property within the proposed district, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement so proposed to be made and state the estimated cost thereof; also the estimated cost of maintaining the lights and supplying the electrical current therefor within such district for the first year; and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvement or the creation of such district, and such notice shall refer to the resolution on file in the office of the city clerk for a description of the boundaries.

At any time within fifteen days after the date of the first publication of the notice of passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed or both. Such notice must be in writing and be delivered to the said clerk of the city council, who shall indorse thereon the date of its receipt by him.

At the next regular meeting of the city council, after the expiration of the time within which said protests may be so made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive, provided, however, that when the protest is against the proposed work and the cost thereof is to be assessed upon property fronting thereon, and the city council finds that such protest is made by the owners of a majority of the property fronting on the proposed work, no further proceedings shall be taken for a period of six months from the date when said protest was received by the said city clerk of said city council.

In determining whether or not sufficient protests have been filed in a proposed district to prevent further proceedings therein, property owned by a county, city or town shall be considered the same as other property in the district. The city council may adjourn said hearing from time to time.

When no protests have been delivered to the clerk of the city council within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, or when a protest shall have been found by the city council to be insufficient or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements; but before ordering any of said proposed improvements, the city council shall

pass a resolution creating the special improvement lighting district in accordance with the resolution of intention theretofore introduced and passed by the city council.

The city or town council may cause the posts, wires, pipes, conduits, lamps or other suitable and necessary appliances, for the purpose of lighting said streets, to be procured and erected by contract or by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide, and after such lighting system has been installed, may, by contract, in such way and manner as the council shall elect, cause the lights to be maintained thereon and electrical current furnished therefor, provided that the posts in any such district shall be of uniform size and character and shall be distributed uniformly upon the street or streets or public highways, or section thereof to be lighted in any such district.

Bonds and Warrants—Interest—Redemption.

Section 4. All cost and expenses incurred in the construction of the improvement specified in this act, shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance drawn against a fund to be known as "Special Improvement Lighting District No. Fund." Said warrants or bonds shall be in the denomination of one hundred (\$100) dollars or fractions or multiples thereof; and may be issued in installments. Such warrants or bonds shall be redeemed by the treasurer when there is money in the fund against which said warrants or bonds are issued available therefor, and may extend over a period not to exceed eight years and shall bear interest at the rate of six per cent per annum from the date of registration thereof, until called for redemption or paid in full, interest to be payable annually on the first day of January of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk.

Preparatory Expense—Accounts by Engineer.

Section 5. The cost and expense connected with and incidental to the formation of any such district including the cost of preparation of plans, specifications, maps, plats, engineering, superintendence and inspection, including the compensation of the city engineer for work done by him and the cost of printing and advertising as provided in this act, and the preparation of assessment-rolls shall be considered a part of the cost and expenses of making the improvements within such special improvement district; and it shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the city clerk, whose duty it shall be to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

Resolution Assessing Cost of Improvement—Notice—Hearing.

Section 6. It shall be the duty of the city or town council to ascertain the cost of installing such lighting system, and on or before the first Monday in October pass and finally adopt a resolution levying and assessing all of the property embraced within said district, including any street or other railway, with not less than one-fourth nor more than three-fourths of the entire cost of installing the same; each lot or parcel of land in said district

to be assessed for that part of the whole cost which its linear feet in front of or abutting said street, avenue, alley or public highway, bears to the total number of linear feet in front of or abutting the streets, avenues, alleys or public highways included within said special improvement district, and levying and assessing against any street or other railway upon such street or public highway, or portion thereof, included in such district not to exceed one-sixth of the total cost of such installation, electrical current and maintenance, which proportion shall be determined by the city or town council. Any such resolution shall contain a list in which shall be described each lot or parcel of land, and any street or other railway with the name of the owner thereof, if known, and the linear number of feet fronting or abutting upon the street or public highway to be lighted, and the amount levied thereon set opposite. Such resolution, signed by the mayor and city clerk shall be kept on file in the office of the city clerk, and a notice signed by the city clerk stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining said lights and supplying electrical current therefor for the first year, as determined by the city or town council, is on file in his office subject to inspection for a period of five days, shall be published at least once in a newspaper published in the city. Such notice shall state the time and place at which objections to the final adoption of such resolution shall be heard by the city or town council, and the time for such hearing shall not be less than five days after the publication of such notice. At the time so fixed the council shall meet and hear all such objections and for the purpose may adjourn from day to day, and may modify such resolution in whole or in part. A copy of such resolution as finally adopted, certified by the city clerk, must be delivered within two days after its passage to the city treasurer. All moneys derived from the collection of such assessments shall constitute a fund to be known as "Special Improvement Lighting District No. Fund."

Contract for Maintenance of Lights—Assessment to Pay Cost.

Section 7. The lights in each district shall be maintained by contract for such period of time and in such way or manner as the city or town council shall elect, provided, however, that the city or town council shall not let a contract for a period to exceed three years. It shall be the duty of the city or town council to estimate, as near as practical, the cost of maintaining such lights and furnishing electrical current thereof each year; and the proportion thereof to be assessed against the abutting or other property, including any such street or other railway, and before the first Monday in October pass and finally adopt a resolution levying and assessing said property, including any such street or other railway, within said district with an amount equal to the proportion of the cost of such maintenance and electrical current so determined to be specially assessed against such property. Said resolution levying and assessing said portion of the cost of maintenance and for furnishing electrical current therefor shall be prepared and certified to in the same manner as the resolution provided for in the preceding section, and the same notice and hearing shall be given thereon, and shall be adopted and certified and the assessment collected in the same manner, as near as may be, as in the case of the resolution provided for in the preceding section. All moneys derived from the collection of the assessments provided for in such resolution shall be paid into a fund known

as "Special Improvement Lighting District No. Maintenance Fund," and the number of which shall correspond with the number of the lighting district, for the maintenance of and the supplying of electrical current for which the tax is levied, and such fund shall be used to defray the expense of maintaining and furnishing electrical current for the lights in said district and for no other purpose. Any special assessment levied and made for any of the purposes aforesaid, together with all costs and penalties shall constitute a lien upon and against the property upon which said assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same; which lien can only be extinguished by payment of such assessment with all penalties, costs and interest.

Effect of Mistake as to Ownership of Property.

Section 8. When under any of the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable.

Remedies for Correction of Errors.

Section 9. All remedies, provisions and means provided by existing laws or by the ordinances of any city availing itself of the provisions of this act for the correction of errors or omissions in the adoption of any resolution or proceeding, or in the levy of any assessment, or for the collection thereof, or for the enforcement of any such levy by sale of the property against which any assessment shall be made, or for the redemption of such property from such sale, or otherwise applicable to the administration of this act shall be available in the administration hereof the same to all intents and purposes as would be the case were such remedies, provisions and means made a part hereof.

Discontinuance of Operation of System—Procedure.

Section 10. If at any time after the creation of any special improvement lighting district a petition shall be presented to the city or town council, signed by the owners or agents of more than three-fourths of the total number of linear feet of the property fronting or abutting upon any street or public highway or portion thereof, included within such district, asking that the maintenance and operation of such special lighting system and the furnishing of electrical current therefor, in such district, be discontinued, the city or town council shall thereupon, by resolution, provided for discontinuing the maintenance and operation of the lighting system; provided, however, that if the city or town council shall have, prior to the presentation of such petition, entered into any contract for the maintenance and operation of such lighting system, such maintenance and operation shall not be discontinued until after the expiration of the contract.

Repealing and Saving Clauses.

Section 11. All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that each and every special improvement lighting district created or attempted to have been created, and each and every bond and warrant issued and each and every assessment made and heretofore created under and by virtue of any of the acts of 1911 and 1913, shall

not be invalidated, but the same are hereby validated, legalized and approved.

United States Property not Liable for Costs.

Section 12. Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall front upon the proposed work or improvement, or be included within the district declared by the city or town council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution on intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the city from its general fund.

Section 13. This act shall be in full force and effect from and after its passage and approval.

Approved March 10, 1915.

IMPROVEMENT DISTRICTS OUTSIDE CITIES.

Chapter 123, Laws 1915, page 278.

"An act empowering county commissioners to create and establish special improvement districts in thickly populated localities outside the limits of incorporated towns and cities, for the purpose of constructing sanitary and storm sewers, installing lights and such other special improvements, that may be petitioned for by sixty per cent of the freeholders affected by the same."

Section 1. The Boards of County Commissioners of the several counties throughout the state are given jurisdiction and power under such limitations and restrictions as are prescribed by law.

To create and establish special improvement districts in thickly populated localities outside the limits of incorporated towns and cities, for the purpose of constructing sanitary and storm sewers, installing lights and such other special improvements, that may be petitioned for by sixty per cent (60%) of the freeholders affected by the same, in general conformity with the provisions of chapter eighty-nine (89), Thirteenth Legislative Session Laws, in so far as the same are applicable to the performance of the special improvements, that may be petitioned for by the aforesaid sixty per cent (60%) resident freeholders thereof. [Approved March 8, 1915; Laws 1915.]

BONDING FIRE DISTRICTS.

Chapter 107, Laws 1911, page 190.

An act providing for bonding fire districts in unincorporated cities and towns.

Be it enacted by the Legislative Assembly of the State of Montana:

Fire Districts and Bonds in Unincorporated Cities and Towns.

Section 1. The board of directors of any duly organized fire district in unincorporated cities or towns within this state shall, whenever a majority of the directors so decide, submit to the electors of the district the

question whether the board shall be authorized to issue coupon bonds to a certain amount, not to exceed three per cent of the taxable property in said district, and bearing a certain rate of interest not exceeding six per cent per annum, and payable and redeemable at a certain time, for the purpose of purchasing fire equipment, necessary lands, erecting buildings for fire purposes and establishing pipe-lines. No such bonds shall be issued unless a majority of all the votes cast at any such election shall be cast in favor of such issue.

Bond Elections—Form and Registration of Bonds.

Section 2. Such election shall be held in the manner prescribed for the election of fire directors. The ballots shall be in form as follows:

"Shall bonds be issued and sold to the amount of . . . dollars and bearing not to exceed . . . % interest and for a period not to exceed . . . years, for the purpose of purchasing fire equipment, necessary lands, erecting buildings for fire purposes, and establishing pipe-lines?"

Bonds, Yes?

Bonds, No?

The elector shall prepare his ballot by crossing out thereon parts of the ballot in such a manner that the remaining part shall express his vote upon the question submitted. If a majority of the votes cast at such election are Bonds "Yes," the board of directors shall issue such bonds in such form as the board may direct, and they shall bear the signature of the president of the board of directors, and shall be signed by the secretary of the said fire districts; and the coupons attached to the bonds shall be signed by the said president and secretary, provided, a lithographic or engraved facsimile of the signature of the president and secretary may be affixed to coupons only, when so recited in the bonds, and the corporate seal of the fire district shall be attached to each of the bonds; and each bond so issued shall be registered by the county treasurer in a book provided for that purpose, which shall show the number and amount of each bond and the person to whom the same is issued or sold; and the said bonds shall be sold by the fire directors as hereinafter provided.

Notice of Sale of Bonds—Proceeds and Delivery.

Section 3. The fire directors shall give notice by advertisement in some newspaper published in this state, for a period of not less than four weeks to the effect that the said fire directors will sell said bonds (briefly describing the same) and stating the time when, and place where such sale will take place; provided that the said bonds shall not be sold for less than their par value, and that the said directors are authorized to reject any bids, and to sell said bonds at private sale, if they deem it for the best interest of the district; and all moneys arising from the sale of said bonds shall be paid forthwith into the treasury of the county in which such district may be located to the credit of said district, and the same shall immediately be available for the purpose authorized by this title; provided, that no such bonds shall be delivered by the board of directors unless the moneys therefor have been paid into the county treasury.

Liability on Bonds.

Section 4. The faith of each fire district is solemnly pledged for the payment of the interest and redemption of the principal of the bonds which shall be issued under the provisions of this title. And for the purpose of

enforcing the provisions of this title, each fire district shall be a body corporate, which may sue and be sued by or in the name of the board of fire directors of such district.

Levy and Collection of Tax.

Section 5. The fire directors of each district shall ascertain and levy annually, the tax necessary to pay the interest when it becomes due and a sinking fund to redeem the bonds at their maturity; and said tax shall become a lien upon the property in said fire district, and be collected in the same manner as other taxes for fire purposes.

Payment and Liquidation of Bonds.

Section 6. The county commissioners, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year, and such portion of the principal as is to become due during such year, and in any event must be high enough to raise, annually, for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon; and during the balance of the term, high enough to pay such annual interest, and to pay annually, a portion of the principal of said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and divide it by the number of years said bonds have to run; and all money so levied, when collected must be paid into the county treasury to the credit of such district, kept in a separate fund and be used for the payment of principal and interest on said bonds, and for no other purpose.

a. Provided, that the board may with the surplus of such sinking fund, when the same shall be one thousand dollars or more, purchase any of the outstanding bonds issued by the board. Such purchase shall be made at the lowest price such bonds can be purchased at, but at no more than par value of such bonds; and whenever there shall be such a surplus of sinking fund amounting to the sum of one thousand dollars, the board shall purchase therewith like bonds on the same terms and conditions as hereinbefore specified.

b. If for any reason such bonds cannot be purchased as hereinbefore specified, such sinking fund shall be invested by the treasurer under the direction of the board of directors, at such times as the board shall direct, in the interest-bearing bonds of the United States or of the state of Montana, which shall be purchased at the lowest market price. Interest accruing upon such bonds shall be invested in the same manner and for the same purpose as sinking fund. Such bonds shall be held by the treasurer until the principal of any bonds issued by the board of directors shall become due, and shall be sold at the highest market price, and the proceeds applied to the payment of bonds; provided, further, that if at any time the board shall deem it best, it shall be lawful to sell such bonds for the purpose of purchasing the bonds issued by such board; but all such sales shall be at the highest market price, and the bonds of the board purchased with the proceeds of such sale shall be purchased at the lowest price they can be obtained for, and not above the par value of such bonds; provided, further, that the bonds first maturing shall be purchased, if they can be purchased, on terms as favorable to the board as others offered for sale to the said board. All bonds of the said board purchased under the authority hereby

given, or paid by the board, shall be forthwith canceled as provided in the next succeeding section.

Sinking Fund and Redemption.

Section 7. When the sum in said sinking fund shall equal or exceed the amount of any bond then due, the county treasurer shall give notice to each bondholder, if known to him and shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the numbers thereof, and preference shall be given to the oldest issue; and if at the expiration of the said thirty days the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds shall be so purchased or redeemed, the county treasurer shall cancel all bonds so purchased and redeemed by writing across the face of such bond or bonds, in red ink, the word "Redeemed" and the date of such redemption; provided, that, whenever in the judgment of the board of fire directors, and prior to the redemption of said bonds said board shall deem it advisable and for the best interests of the fire district to invest said sinking fund or any part thereof, the board may by an order entered upon their minutes direct and require the county treasurer to invest said sinking fund or any part thereof in state or county bonds or warrants until such redeemable period.

Payment of Interest by County Treasurer.

Section 8. The county treasurer shall pay out of any moneys belonging to a fire district the interest upon any bonds issued under this title by such district when the same shall become due, upon the presentation at his office of the proper coupon which shall show the amount due, and the number of the bond to which it belonged; and all coupons so paid shall be reported to the fire directors at their first meeting thereafter.

Printing of Bonds and Coupons.

Section 9. The fire directors of any district shall cause to be printed or lithographed at the lowest rates, suitable bonds, with the coupons attached, when the same shall become necessary, and pay therefor out of any moneys in the county treasury to the credit of said fire district.

Failure to Pay Proceeds of Sale of Bonds in Treasury.

Section 10. If any of the fire directors of any district shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for by this title, they shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the State Penitentiary for a term of not less than one year nor more than ten years.

Section 11. All acts and parts of acts in conflict herewith are hereby repealed.

Section 12. This act shall be in full force and effect from and after its passage and approval.

Approved March 6, 1911.

The legislature by the use of the word "town" is not to be understood in all cases as meaning an incorporated town. State

ex rel. Powers v. Dale, 47 Mont. 229, Ann. Cas. 1914D, 227, 131 Pac. 670.

GLACIER NATIONAL PARK.

Chapter 33, Laws 1911, page 51.

An act to cede jurisdiction over "The Glacier National Park" to the United States, and for other purposes.

Be it enacted by the Legislative Assembly of the State of Montana:

Glacier National Park Ceded to United States.

Section 1. That exclusive jurisdiction shall be, and the same is hereby, ceded to the United States over and within all the territory which is now or may hereafter be included in that tract of land in the state of Montana set aside by the act of Congress approved May 11, 1910, for the purposes of a national park, and known and designated as "The Glacier National Park," saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid park in any suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside of said park, and saving further to the said state, the right to tax persons and corporations, their franchises and property, on the lands included in said park: Provided, however, that jurisdiction shall not vest until the United States through the proper officers notifies the Governor of this state that they assume police or military jurisdiction over said park.

Section 2. All acts and parts of acts in conflict with this act are hereby repealed.

Section 3. This act shall be in force and effect from and after its passage and approval by the Governor.

Approved February 17, 1911.

ERECTION OF DOCKS AND WHARVES.

Chapter 38, Laws 1909, page 42.

An act to provide for the erection of dock and wharves on the navigable waters within the state of Montana, and to provide for their management and control.

Be it enacted by the Legislative Assembly of the State of Montana:

Who may Build Wharves and Docks.

Section 1. Any person or persons owning land bordering upon any of the navigable waters within the state of Montana, is hereby granted a license and permit to build docks and wharves over, across and upon the "lands under water" belonging to the state of Montana. Provided, however, that such docks and wharves shall be extended out into such navigable water such distance only as may be necessary to permit any and all boats, steamboats and vessels to safely land thereat and discharge and take on its or their cargoes and passengers.

Public Use of Wharves and Docks—Charges.

Section 2. That all docks and wharves built on any of the navigable waters of the state shall be public docks and wharves, and all boats, vessels and steamboats plying such navigable waters shall have a right to land thereat and take on and discharge its or their cargoes and passengers

thereon. Provided, however, the owner of such dock or wharf shall have the right to charge and collect from the owner or owners of such boat, steamboat or vessel, a reasonable compensation therefor.

Revocation of License.

Section 3. The license granted in section 1 of this act to build docks and wharves over and upon the lands under the navigable waters of this state, conveys no title in such lands and such license may be revoked by the state of Montana at any time.

Land Under Navigable Water.

Section 4. By the term "land under water" is meant all land under any navigable waters of this state, extending from high-water mark or from the meander line where the shores of lakes or streams have been meandered, to the lake or stream.

Jurisdiction of Railroad Commission.

Section 5. The Railway Commission of this state shall have jurisdiction over all docks and wharves within the state and have full power to regulate, determine and fix all dockage and wharfage fees.

This act shall take effect and be in full force from and after its passage and approval.

All acts and parts of acts in conflict herewith are hereby repealed.

Approved February 27, 1909.

INSPECTION OF BOATS AND VESSELS.

Chapter 63, Laws 1913, page 119.

"An act to provide for the inspection of steamboats and all other boats propelled by machinery, sailing craft, ferry-boat and barges other than private pleasure crafts, on any of the navigable waters of the state of Montana, to provide for their inspection and for the appointment of an inspector of navigation, to define his duties, to provide for his compensation, and to provide sailing rules for all such boats including pleasure crafts propelled by machinery, and for the general superintendence and control of navigation by the State Board of Railroad Commissioners: Providing penalties for violation of its provisions, repealing chapter 105 of the Session Laws of the Twelfth Legislative Assembly, and all acts and parts of acts in conflict herewith."

Be it enacted by the Legislative Assembly of the State of Montana:

Appointment of Inspector of Water Crafts.

Section 1. The Board of Railroad Commissioners of the state of Montana shall appoint some suitable person inspector of steam vessels, other boats propelled by machinery, sailing crafts, ferry-boats and barges, other than private pleasure boats, on any of the navigable waters of the state of Montana. Said inspector shall have a practicable knowledge of such boats and vessels and ferry-boats as ply the navigable waters of the state of Montana, and shall be experienced in the construction and familiar with the safety appliances of all such boats and their appurtenances.

Inspection and Examination—Determination of Capacity of Boat.

Section 2. The inspector shall annually, or as often as the Board of Railroad Commissioners may order, inspect every steamboat or other barge

propelled by machinery, or sailing boat, ferry-boat or barge, other than private pleasure boat, and shall examine carefully the hull of such boats and their equipment, and require such changes, repairs and improvements to be adopted and used as he may deem expedient for the safety of all such boats. He shall also fix the number of passengers that may be transported upon any boat; he shall likewise fix the number of tons of freight that may be carried upon any such boat, barge or ferry-boat. He shall, whenever he deems it expedient to do so, visit any such boat and examine into its condition or their condition, for the purpose of ascertaining whether such boat or boats have a certificate from the Board of Railroad Commissioners and whether such boats are conformable to and obeying the conditions imposed by this act and by the Board of Railroad Commissioners. The owner, master, pilot and captain or engineer of such vessel or boat shall answer all reasonable questions and give all the information in his or her possession in regard to such boat or boats, or any of them, concerning their machinery and the manner of managing said boat. The said inspector shall examine all life saving appliances and lifeboats carried on any such vessels, steamboats or other boats propelled by machinery, as well as all ferry-boats. The inspector shall report the condition of all such boats, life-saving appliances and lifeboats to the board of Railroad Commissioners.

Failure of Boat Owner to Comply With Requirements — Measures to be Taken.

Section 3. The inspector shall at all times have free access to any and all of such boats and parts thereof, and shall have free transportation thereon for the purpose of making such inspection; and he is hereby authorized, whenever in his judgment the master, owner, captain or pilot of any of the boats mentioned in this act, has failed to comply with the provisions of this act, or when he deems such boat unsafe, to cause the same to be tied up until such owner, master, captain or pilot shall have complied with the provisions of this act, or until such boat shall have been made safe and seaworthy, as the case may be; and if any such master, owner, captain or pilot or any other persons shall release or cause to be released, any such boat, he shall be deemed guilty of a misdemeanor.

Licenses to Boats, Captains and Pilots—Regulations.

Section 4. The inspector shall report all of his findings to the Board of Railroad Commissioners of the state of Montana, which said commission shall thereupon, if in its opinion said boat shall be seaworthy and safe for the carrying of passengers and freight, issue to such boat a certificate or permit to engage in the business of navigation on any of the navigable waters of the state of Montana, and shall likewise issue licenses to any captain or pilot of said boat, if in its judgment said captain or pilot is qualified for the duties imposed upon him by the provisions of this act; and said commission shall issue all rules and regulations that (that) may be in its judgment necessary for the safe navigation of all steamboats all (all) boats propelled by machinery, sail-boats, ferry-boats and barges, including pleasure crafts propelled by machinery navigating on any of the navigable waters of this state.

Number of Passengers not to Exceed Number Allowed in Certificate.

Section 5. No greater number of passengers shall be transported upon licensed boat, steamboat or other boat propelled by machinery, or

sailing boat, or ferry-boat or barge, than the number allowed in the certificate to such boat, vessel, steamboat, or other boat propelled by machinery, or sailing boat, ferry-boat or barge, and any captain, pilot, owner or engineer of such boat who shall violate any of the provisions of this section shall be guilty of a misdemeanor and shall be punished accordingly, and shall have (at the direction of the Board of Railroad Commissioners) his license revoked.

Fire Protection in Boats.

Section 6. All steamboats to which this act shall apply shall be so constructed that all woodwork about the boiler, smokestack, fire-boxes, chimneys, cook-houses, stoves and stovepipes exposed to ignition shall be so shielded by some incombustible material that the air shall circulate freely between such material and woodwork or other ignitable substance, and before granting the certificate of inspection the Board of Railroad Commissioners shall require that all necessary provisions be made as it may deem expedient to guard against loss or damage by fire.

Rules of Navigation.

Section 7. The following rules shall be observed in navigating steam vessels, steamboats and all other boats propelled by machinery, and sailing crafts on any of the navigable waters of the state of Montana affected by the provisions of this act.

Rule 1. All steamboats or other boats propelled by machinery shall be equipped with either steam or compressed-air whistles.

Rule 2. When two boats are meeting, or nearly end-on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

Rule 3. When two boats are crossing so as to involve risk of collision, the boat which has the other on her starboard shall keep out of the way of the other.

Rule 4. When a steamboat or boat propelled by machinery and sailing boat are proceeding in the same direction so as to involve risk of collision, the boat propelled by machinery shall keep out of the way of the sailing craft.

Rule 5. When, by any of these rules one of the two of the vessels is to keep out of the way, the other shall keep her course and speed.

Rule 6. Every boat propelled by machinery under way and approaching another boat or vessel of any kind so as to involve a risk of collision, shall slacken her speed, or, if necessary, shall stop and reverse her engine, and every boat propelled by machinery shall, when in a fog, go at a moderate speed.

Rule 7. Any boat propelled by machinery overtaking another boat propelled by machinery shall keep out of the way of the last-named boat.

Rule 8. When two boats propelled by machinery are going in the same direction and the stern boat wishes to pass the other, she shall signal the forward boat of her intention to pass on the port side, by two distinct whistles, and to pass on her starboard side by one distinct whistle, which shall be answered by the forward boat by the same number of whistles, and the forward boat shall keep on her course as if no signal had been given.

Rule 9. When two steamboats or other boats propelled by machinery are approaching each other, and if the course of such boats is so far on

the starboard side of each other as not to be considered by the pilot as meeting end-on or nearly so, or, if such boats are approaching each other in such a manner that passing is not as in rule 2, being deemed unsafe, the pilot of one boat shall give two short and distinct blasts of his whistle, which the pilot of the other boat shall answer by two blasts of his whistle, and they shall pass to the left (on the starboard side) of each other.

Rule 10. Steamboats or other boats propelled by machinery approaching each other at not less than three hundred yards distance from each other shall give a signal with one loud distinct whistle.

Rule 11. When two steamboats or other boats propelled by machinery are approaching each other and the pilot of either boat fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short blasts of his whistle, and if the boats shall have approached within five hundred yards of each other, both shall immediately slow up to a speed barely sufficient for steering or until the proper signals are given, answered and understood or until the boats have passed each other.

Rule 12. When a steamboat or other boat propelled by machinery is in a fog or is in thick weather, it shall be the duty of the pilot to cause a long blast of the whistle to be sounded at intervals of not to exceed one minute.

Rule 13. Signals of distress shall be four blasts of the whistle and shall be recognized by the master of any steamboat or other boat propelled by machinery hearing the same, and he shall render such assistance as in his power.

Rule 14. Any steamboat or other boat propelled by machinery landing at a wharf or dock, shall have the right to such wharf or dock for a period of five minutes. If detained at the wharf or dock for a longer period than five minutes, the steamboat or other boat propelled by machinery already at the wharf shall allow another steamboat or other boat propelled by machinery to land alongside and discharge her passengers and freight over her deck for at least ten minutes and thereafter until the first steamboat or other boat propelled by machinery shall leave said wharf or dock.

Rule 15. In the construing of these provisions, due regard must be had for all of the dangers of navigation and to any special circumstances which may render a departure therefrom necessary in order to avoid immediate danger.

Rule 16. Every steamboat or other boat propelled by machinery which is under sail and not under steam, is to be considered a sailing vessel, and any or every vessel under steam or propelled by machinery, whether under sail or not, is to be considered a steam vessel.

Rule 17. All steamboats or other boats propelled by machinery licensed under the provisions of this act or article shall conform to and obey such other rules and regulations not inconsistent herewith as the Board of Railroad Commissioners may direct.

Rule 18. Every steamboat or other boat propelled by machinery on the navigable waters within the jurisdiction of this state, shall have two copies of this section framed; one to be posted in the pilot-house and the other to be hung in a conspicuous place on the vessel for the inspection of passengers.

Lights to be Carried by Boats.

Section 9. The master or pilot in charge of the steamboat, or other boat propelled by machinery, or sailing craft, when navigating any of the water of this state, shall between sunset and sunrise cause said boats to carry the following lights: First: At the foremost head, a bright white light of such a character as to be visible on a dark night, in a clear atmosphere at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an area of the horizon of twenty points of the compass, and to be so fixed as to show the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side. Second: On the starboard side a green light of such a character as to be visible on a dark night with a clear atmosphere, at a distance of at least two miles, and be so constructed as to show a uniform and unbroken light over an arc of the horizon to ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. Third: On the port side a red light of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon to ten points of the compass and so fixed as to throw the light from right ahead to two points abaft to the beam on the port side. The red and green lights shall be fixed with screens so as to prevent them from being seen from the rear.

Force Pumps to be Carried.

Section 10. Every steamboat or other boat propelled by machinery, other than private pleasure boats, shall be provided with a force pump or an equivalent apparatus for throwing water, and the same shall be at all times during the navigation of such boat, kept ready for use. Such pump shall be of suitable size and construction to use either in extinguishing fires or pumping water out of the boat, and shall be approved by the Board of Railroad Commissioners.

Life and Other Boats to be Carried—Practice Drills.

Section 11. Every steamboat or other boat propelled by machinery, and sailing craft or ferry-boat affecting by the provisions of this act, shall carry on their deck, hung from davits, such lifeboats, or other boats as shall be ordered by the Board of Railroad Commissioners. And every captain shall order and hold a practice drill for the lowering of lifeboats and fire drill at least once every month, and shall keep a record of all such drills, which record shall be kept in a convenient place on such boat and shall at all times be subject to inspection by the public.

Life-preservers.

Section 12. Every steamboat or other boat affected by this act shall have a life-preserver for each passenger, and she shall also carry one for each of her crew. Such life-preserver shall be made of good, sound cork blocks, easily adjusted to the body with belts and straps, properly attached, and so constructed as to pass the cork under the shoulders and around the body of the person wearing the same. Each life-preserver shall contain at least six pounds of good cork, having a buoyancy of at least four pounds to each pound of cork. It shall be the duty of the inspector to satisfactorily ascertain that every life-preserver is as herein required. All such life-preservers shall be kept in a convenient place, accessible in case of accident, in readiness for immediate use, and the place where same are kept

shall be designated in the certificate issued by the Board of Railroad Commissioners and pointed out by printed notices posted in such places as the Board of Railroad Commissioners may direct.

Inspection by State Boiler Inspector.

Section 13. The state boiler inspector shall inspect all steam boilers in each of the steamboats within the state.

Printing of Name on Boat.

Section 14. Every steamboat or other boat propelled by machinery or sailing craft subject to the provisions of this act shall have her name printed on her stern, in either black, yellow or red letters, of not less than three inches in length.

Deprivation of Services of Licensed Officer—Duty of Railroad Commissioners.

Section 15. If any boat subject to the provisions of this act shall be deprived of the services of any licensed officer without the consent, fault or collusion of the matter, [master] owner or person interested in such boats, the Board of Railroad Commissioners shall be notified and the deficiency may be temporarily supplied until the services of a licensed officer can be obtained.

Inspection Fees.

Section 16. The owner of every steamboat or other boat propelled by machinery, sailing boat, ferry-boat or barge, subject to the provisions of this act, shall pay the Board of Railroad Commissioners, for the use and benefit of the state, an inspection fee on such boats, as follows, to wit: For each boat under ten tons burden, ten (\$10) dollars; for each boat over ten tons burden and under twenty tons burden, fifteen (\$15) dollars; for each boat over twenty tons and under fifty tons burden, twenty (\$20) dollars; for each boat over fifty tons and under one hundred tons burden, twenty-five (\$25) dollars, and all over a hundred tons burden, thirty (\$30) dollars. For each ferry-boat, ten (\$10) dollars, and for each barge, ten (\$10) dollars.

Licensed Fees.

Section 17. For every license granted under the provisions of this act, there shall be charged and collected from the person receiving such license, for the use and benefit of the state, the sum of five (\$5) dollars, which said license shall remain in full force for one year from the date thereof.

Compensation of Inspector—Inspection and License Fees.

Section 18. The inspector shall receive for all services by him, under the supervision of the Board of Railroad Commissioners, in full for such services as inspector, the sum of twelve hundred (\$1,200) dollars per annum, and no other or further fee or compensation. The fees for the inspection shall be paid at the time of the inspection. All fees for licenses shall accompany the application for such license, and in case such license is not issued, the fees shall be returned to the applicant; all fees to be accounted for and paid over to the State Treasurer monthly.

Powers and Duties of Railroad Commission.

Section 19. It is hereby made the duty of the Board of Railroad Commissioners to enforce the provisions of this act, and said Board of Railroad Commissioners shall have the jurisdiction to make all needful rules

providing for the safety of all passengers, crews and freight traveling or being transported upon the navigable waters of this state, provided that such rules are within the provisions of this act.

Operation of Boats Without Complying With Law.

Section 20. It shall be unlawful for any person or persons to operate any steamboat or other boat propelled by machinery, sailing craft or ferry-boat, or engage in the business of the navigation of boats, without first complying with the provisions of this act.

Penalty for Violation of Act.

Section 21. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined in any sum not less than twenty-five (\$25) dollars, nor more than three hundred (\$300) dollars, or imprisonment in the county jail not exceeding six months; and in addition thereto the Board of Railroad Commissioners may revoke or suspend the license of any captain or pilot of any boat navigated in violation of the provisions of this act.

Repealing Clause.

Section 22. Chapter 105 of the Session Laws of the Twelfth Legislative Assembly and all acts and parts of acts in conflict herewith are hereby repealed.

Section 23. This act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1913.

RAILROAD COMMISSION.*

Chapter 136, Laws 1909, page 204.

An act to regulate common carriers, and to provide for certain appliances, rules and regulations looking to the safety of the traveling public and employees upon railway trains, and to confer upon the Railroad Commission of Montana certain powers in relation thereto.

Be it enacted by the Legislative Assembly of the State of Montana:

Rules for Equipment of Cars, Trains and Engines—Inspection Rules and Regulations to be in Conformity With the Acts of Congress.

Section 1. The Railroad Commission of the state of Montana shall have full authority to, after notice and hearing, make and enforce rules and regulations providing for the installation on and equipment of, trains, cars or engines, with safety appliances and shall have authority to inspect the same and enforce regulations with regard thereto, such inspection, rules and regulations to be from time to time coextensive with the requirements of, and in conformity to, the provisions of the acts of Congress and rules and regulations of the Interstate Commerce Commission as then effective.

Brake Equipments.

Section 2. The Railroad Commission of the state of Montana shall have the power and authority to examine and inspect all brakes and brake equipment and to, after notice and hearing, make and enforce reasonable

*See the two following chapters as amendatory of this one.

rules and regulations with respect to the examination, inspection and repair thereof, with a view of determining the proper measure of efficiency of said brakes and brake equipment. Such rules and regulations to be from time to time coextensive with the requirements of, and in conformity to the provisions of the acts of Congress and rules and regulations of the Interstate Commerce Commission as then effective.

Platforms and Stations Where One Railroad Crosses Another.

Section 3. The Railroad Commission of the state of Montana shall have power and authority whenever the line of one railroad shall cross or intersect the railroad of another company or corporation to, after notice and hearing, order and compel the installation of suitable platforms and station-houses for the convenience of passengers desiring to transfer from one road to the other and for the transfer of passengers, baggage or freight, whenever the same shall be ordered by the Railroad Commission. And such company or corporation shall, when so ordered by the Railroad Commission keep such passenger station warmed, lighted and opened to the ingress and egress of all passengers, a reasonable time before the arrival and after the departure of such trains as accommodate such station carrying passengers on such railroad or railroads. And said railroad companies crossing or intersecting shall stop such trains at said station-house so located at said crossing or intersection for the transfer of baggage, passengers and freight so as to furnish reasonable facilities for that character of a station when so ordered by the Railroad Commission and the expense and construction and maintenance of such station house and platform shall be paid by such corporations in such proportions as they may agree; and if they fail to agree, as may be fixed by order of the Railroad Commission and the expense and construction of intersections as aforesaid shall also, when so ordered, after notice and hearing, by the Railroad Commission unite and connect the tracks of said several corporations so as to permit the transfer from the track of one corporation to the other, of loaded or unloaded cars designed for transportation on both roads, provided, however, that no such union or connection shall be ordered except where and when necessary to properly serve the public.

Industrial and Commercial Spurs—Provided Such Spurs Do not Exceed One Mile in Length—Provided Such Spurs Shall not be Ordered Constructed Except Within What Limits.

Section 4. The Railroad Commission of the state of Montana shall have full power and authority to, after notice and hearing, compel railroad companies operating in the state of Montana to construct industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities, provided, however, that any such industrial or commercial spur will not exceed one mile in length from headlock to end of track, and shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs, and provided further, that such industrial or commercial spur shall not be ordered constructed except within the limits of extreme switches of stations or yards, or at sidings unless such station, yards, sidings or spurs are more than seven miles apart, nor unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main line operation.

Proceedings in District Court.

Section 5. The district court shall have jurisdiction to enforce by proper decree, injunction or order, the rulings, orders and regulations made and established by the commission under the provisions of this act. The proceeding therefore shall be by equitable action in the name of the state, and shall be instituted by the Attorney General or county attorney, whenever advised by the board that any railroad is violating or refusing to comply with any rule, order or regulation made by the commission and applicable to such railroad. Such proceedings shall have the precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order or regulation involved is unreasonable and unjust as to them. If in such action, it be the decision of the court that the rule, regulation or order is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to, and compliance with the rule, regulation or order, by the defendant, and its officers, agents, servants and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent, servant or servants or employees of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation or order shall be modified or vacated by the board. Provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the Constitution of the United States, or as provided by the Constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

Appeals to Supreme Court.

Section 6. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business, and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

Action to Determine Reasonableness of Rule.

Section 7. Any railroad may bring an action in the district court of the county where the principal office or place of business is situated or in any county where any such rule, regulation or order of the board is applicable, against the said board as defendant, to determine whether or not any such rule, regulation or order made, fixed or established by the board under provisions of this act is just and reasonable; provided, that until the final decision in any such action the rule, regulation or order of the board affecting any railroad shall be deemed to be final and conclusive; and provided, further, that in any action, hearing or proceeding in any court, the rules, regulations and orders made, fixed and established by said board

shall prima facie be deemed to be just, reasonable and proper. All costs and expenses incurred in the hearing, trial or appeal of any action brought under this section, shall be fixed and assessed as by the court may seem just and equitable.

Section 8. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Section 9. This act shall be in full force and effect from and after its passage and approval.

Approved March 10, 1909.

RAILROAD COMMISSIONERS.

Chapter 105, Laws 1913, page 441.

"An act to regulate common carriers, and to provide for certain rules and regulations looking to the safety and convenience of the traveling public and shippers upon railroad or railway trains; to compel the installation of suitable platforms and station-houses, and to order the construction of connecting tracks where the line of one railroad or railway crosses, intersects or parallels (overhead, at grade or otherwise), the line or lines of another railroad or railway; to provide for the apportionment of joint freight rates; to compel the construction or extension of public loading or unloading tracks, and stock-yards, stock-chutes or stock-pens; and conferring upon the Board of Railroad Commissioners of the state of Montana, certain powers in relation to all the foregoing, giving the district court the power to enforce the rulings of the commission; giving both parties the right of trial by jury and appeals, and providing a penalty for the violation of this act."

Powers of Railroad Commission as to Station and Crossings.

Section 1. The Board of Railroad Commissioners of the state of Montana shall have power and authority in addition to all other powers hereafter vested in said board, whenever the line of one railroad, or railway shall cross, intersect or parallel, (overhead, at grade, or otherwise), the railroad or railway of another company or corporation, after notice and hearing, to order and compel the installation of suitable platforms and station-houses for the convenience of passengers desiring to transfer from one road to the other and for the transfer of passengers, baggage or freight, whenever the same shall be ordered by the Board of Railroad Commissioners. And such company or corporation shall, when so ordered by the Board of Railroad Commissioners, keep such passenger station warmed, lighted and opened to the ingress and egress of all passengers a reasonable time before the arrival and after the departure of such trains as accommodate such station, carrying passengers on such railroad or railway. And said railroad or railway companies crossing, intersecting or paralleling (overhead, at grade, or otherwise), shall stop such trains at said station-house so located for the transfer of baggage, passengers and freight, so as to furnish reasonable facilities for that character of a station when so ordered by the Board of Railroad Commissioners, and the expense and construction and maintenance of such station-house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to agree, as may be fixed by order of the Board of

Railroad Commissioners. Such corporation connecting by crossing, intersecting or paralleling (overhead, at grade, or otherwise), shall also when so ordered, after notice and hearing by the Board of Railroad Commissioners, unite and connect the tracks of said several corporations so as to permit the transfer from the tracks of said several corporations to the tracks of each other, of loaded and unloaded cars designed for transportation on both roads, provided, however, that no such union or connection shall be ordered except where and when necessary to properly serve the public. The expense of construction and maintenance shall be apportioned; and the material to be used and the route to be followed shall be determined by such corporations as they may agree, and in the event that they fail to agree, as may be fixed by order of the Board of Railroad Commissioners, and the expense thus incurred by the Board of Railroad Commissioners shall be paid by the railroad or railway companies jointly interested, on such basis as the commission may order.

"Paralleling," as referred to in this act, shall be held to mean where the main tracks of parallel lines of railroad or railway are not more than two thousand (2,000) feet apart when measured from center to center.

Joint Rates—Division Among Carriers.

Section 2. Whenever the Board of Railroad Commissioners of the state of Montana shall have established a joint rate for the transportation of freight carried over two or more connecting lines of railroad, railway or common carrier; the railroads, railways or common carriers affected by such joint rate may by agreement provide for the distribution thereof between themselves, and in the event that the railroads, railways or common carriers affected by such rates shall fail to agree upon the distribution of such rate for a period of sixty days after the order fixing and determining such joint rate shall have been made by the Board of Railroad Commissioners, then the said Board of Railroad Commissioners shall have power and it is hereby made its duty to call a hearing of which hearing, the railroads, railways, or common carriers affected by such joint rate shall have at least twenty days notice, and upon such hearing the Board of Railroad Commissioners shall proceed to fix and determine the pro rata distribution of such joint rate between the railroads, railways, or common carriers affected thereby.

Power of Railroad Commission as to Sidetracks, Stockyards and Chutes.

Section 3. The Board of Railroad Commissioners of the state of Montana shall have full power and authority after notice and hearing to compel railroads, railways, or common carriers operating within the state of Montana, to construct or extend public loading or unloading tracks at stations, and shall likewise have full power and authority to compel the construction or extension of stock-yards, stock-chutes, or stock-pens, whenever the necessity therefor has been established to the satisfaction of the commission.

Enforcement of Regulation in District Court.

Section 4. The district court shall have jurisdiction to enforce by proper decree, injunction or order, the rulings, orders and regulations made or established by the commission under the provisions of this act. The proceedings therefor shall be by equitable action in the name of the state, and shall be instituted by the Attorney General or county attorney whenever advised by the board that any railroad, railway, or common car-

rier is violating or refusing to comply with any rule, order or regulation made by the commission and applicable to such railroad, railway or common carrier. Such proceedings shall have precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order or regulation involved is unreasonable and unjust as to him. If in such action, it be the decision of the court that the rule, regulation or order is not unreasonable or unjust and that in refusing compliance therewith, the railway, railroad, or common carrier is thereby failing or omitting the performance of any duty or obligation the court shall decree a mandatory and perpetual injunction compelling obedience to, and compliance with the rule, regulation or order by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant, officer, agent, servant or servants, or employees of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punished by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt, until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation or order shall be modified or vacated by the Board of Railroad Commissioners, provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the Constitution of the United States, or as provided by the Constitution of this state. Any appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

Appeals to Supreme Court.

Section 5. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business, and original proceedings in such courts, and shall be heard and determined as are appeals in civil actions.

Action by Carrier Against Railroad Commissioners.

Section 6. Any railroad, railway, or common carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such rule, regulation or order of the Board of Railroad Commissioners is applicable, against the said board as defendant, to determine whether or not any such rule, regulation or order made, fixed or established by said board under provisions of this act is just and reasonable, provided, that until the final decision in any such action, the rule, regulation or order of said board affecting any railroad, railway, or common carrier shall be deemed to be final and conclusive; and provided, further, that in any action, hearing or proceeding in any court the rules, regulations and orders made, fixed and established by said board shall prima facie be deemed to be just, reasonable and proper. All costs and expenses incurred in the hearing, trial or appeal of any action brought under this section shall be fixed and assessed as by the court may seem just and equitable.

Penalty for Failure of Railroad to Comply With Regulations.

Section 7. Any railroad or railway company, or common carrier, its officers or agents, subject to the provisions of this act, who shall refuse or fail to comply with the provisions of this act or any order, rule or regulation relative thereto, made by the Board of Railroad Commissioners, shall be subject to a fine of not less than twenty-five dollars (\$25), nor more than fifty dollars (\$50), and each day of such refusal or failure shall be deemed a separate offense and be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the Board of Railroad Commissioners in any court of competent jurisdiction.

Section 8. All acts and parts of acts in conflict herewith are hereby repealed.

Section 9. This act shall be in full force and effect from and after its passage and approval.

Approved March 15, 1913.

COMPLAINTS BY RAILROAD COMMISSION.

Chapter 115, Laws 1913, page 460.

"An act imposing further duties upon the Board of Railroad Commissioners in respect to the inspection of railroads and their equipment and operation, with a view to safeguarding the lives of persons engaged in the operation of trains."

Be it enacted by the Legislative Assembly of the State of Montana:

Injuries by Railroad Commission—Complaints and Reports.

Section 1. It is hereby made the duty of the Board of Railroad Commissioners to make inquiry into the observance by all railroads within this state of the laws of the United States and of the state of Montana intended to safeguard the lives of the employees of persons or corporations engaged in operating the same and to lay complaint before the proper officer, state or federal, of any infraction of any of such laws and to prosecute before the proper court or tribunal any person guilty of violation of the penal provisions thereof.

Section 2. Said board shall, in its annual report, set out what effort it has made to carry out the provisions of this act with the results thereof, and in detail what steps it has taken to procure to be prosecuted any violations of any such acts of which it has secured information.

Section 3. This act shall take effect and be in force from and after its passage and approval.

Approved March 17, 1913.

PUBLIC SERVICE COMMISSION.

Chapter 52, Laws 1913, page 88.

An act making the Board of Railroad Commissioners of the state of Montana ex officio a public service commission for the regulation and control of certain public utilities, prescribing the manner in which such public utilities shall be regulated and controlled, requiring such public utilities to furnish reasonably adequate service and facilities. Prohibiting unjust and unreasonable charges for services rendered by such public utilities, providing penalties for violation of the provisions of this act, authorizing such Public Service Commission to appoint an expert engineer and to employ clerks and assistants and making an appropriation for carrying out the provisions of this act.

Be it enacted by the Legislative Assembly of the State of Montana:

Creation of Public Service Commission.

Section 1. A Public Service Commission is hereby created, whose duty it shall be to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with this act.

Railroad Commissioners as Ex-officio Commission.

Section 2. The Board of Railroad Commissioners of the state of Montana shall be ex officio, the Public Service Commission hereby created, and for the purposes of this act shall be known and styled "Public Service Commission of Montana." It shall provide itself with a seal bearing these words, by which its official acts shall be authenticated in all cases where a seal is required; and in the name as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the Railroad Commission of Montana shall act as secretary of the commission hereby created, but the business of the Public Service Commission shall be kept entirely separate from that of the Railroad Commission.

"Public Utility" Defined.

Section 3. The term "public utility," within the meaning of this act shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate or control any plant or equipment, or any part of a plant or equipment within the state for the production, delivery or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, street railway service, light, power in any form or by any agency, water for business, manufacturing, household use, or sewerage service whether, within the limit of municipalities, towns and villages, or elsewhere; telegraph or telephone service, and the Public Service Commission is hereby invested with full power of supervision, regulation and control of such utilities, subject to the provisions of this act and to the exclusion of the jurisdiction, regulation and control of such utilities by any municipality, town or village.

Power to Prescribe Rules of Procedure—Judicial Power.

Section 4. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have

power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, corporation, municipality, county, town or village the right to test in court of competent jurisdiction, the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers.

Public Utilities to Furnish Service for Reasonable Charges.

Section 5. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, telegraph or telephone service, produced, transmitted, delivered or furnished, or for any service to be rendered as, or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

Power of Commission to Ascertain Property Values.

Section 6. The commission may, in its discretion, investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. In making such investigation the commission may avail itself of all information contained in the assessment-rolls of various counties, and the public records of the various branches of the state government or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

Books, Accounts and Records of Public Utilities.

Section 7. (a) Every public utility shall keep and render to the commission in the manner and form prescribed by the commission, uniform accounts of all business transacted.

(b) Every public utility engaged directly or indirectly in any other business than those mentioned in section 3 of this act, shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this act shall apply with like force and effect to the books, accounts, papers and records of such other business.

(c) The commission shall cause to be prepared, suitable blanks for carrying out the purposes of this act, and shall, when necessary, furnish such blanks to each public utility.

(d) No public utility shall keep any other books, accounts, papers or records of the business transacted, than those prescribed or approved by the commission. Each public utility shall have an office in one of the towns, villages or cities in this state, in which its property, or some part thereof, is located, and shall keep in said office all such books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers or records required by the commission to be kept within the state, shall be at any time removed from the state, except upon such conditions as may be prescribed by the commission.

(e) The accounts of such public utilities shall be closed annually on the thirtieth day of June, a balance sheet taken promptly therefrom, and full annual reports of the business be made to the commission not later than the 15th day of September following the closing of the accounts. The reports shall be in such form as prescribed by the commission, and shall contain all the information deemed by the commission necessary for the proper

performance of its duties. The commission may at any time, call for desired information omitted from such reports, or not provided for therein, whenever, in the judgment of the commission, such information is necessary.

(f) Any commissioner or any person or persons authorized by the commission, shall have the right to examine the books, accounts, records and papers of any public utility for the purposes of determining their correctness and whether they are being kept in accordance with the rules and system prescribed by the commission.

Failure of Public Utility to Make Reports or Permit Examinations.

Section 8. Any officer, agent or person, in charge of the books, accounts, records and papers, or any of them of any public utility, who shall refuse or fail for a period of thirty days, to furnish the commission with any report required by the provisions of this act, and any officer, agent or person in charge of any particular books, accounts, records or papers relating to the business of such public utility, who shall refuse to permit any commissioner or other person duly authorized by the commission, to inspect such books, accounts, records or papers on behalf of the commission, shall be subject to a fine of not less than one hundred (100) dollars, or more than five hundred (500) dollars, such fine to be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction; and each day's refusal or failure on the part of such officer, agent or person in charge, shall be deemed a separate offense, and be subject to the penalty herein prescribed.

Records and Reports of Commission.

Section 9. The commission shall make and publish annual reports for each calendar year, showing its proceedings, which report, shall as nearly as may be conform in a general way, to those of the Railroad Commission of the state and be made at the same time. All the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission shall be open to the public at all reasonable times, subject to the exception that when the commission deems it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety days after the acquisition of such facts or information.

Commercial Units of Product or Service — Standard of Measurement — Examination and Testing.

Section 10. (a) The commission shall ascertain and prescribe for each kind of public utility, suitable and convenient commercial units of product or service. These shall be lawful units for the purposes of this act.

(b) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof.

(c) The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliances tested upon payment of the fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the

consumer or user at the time of his request, which fees, however, shall be paid by the public utility and repaid to the complaining party, if the quality or quantity of the product or the character of the service be found by the commission defective or insufficient in a degree to justify the demand for testing; or the commission may apportion the fees between the parties as justice may require.

(d) The commission may in its discretion, purchase such materials, apparatus and standard measuring instruments for such examinations and tests as it may deem necessary.

(e) The commission, its agents, experts or examiners shall have the power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this act, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. Any public utility refusing to allow such examinations to be made as herein provided, shall be subject to the penalties prescribed in section 8 of this act.

Schedules of Rates, Tolls and Charges.

Section 11. (a) Every public utility shall file with the commission within a time fixed by the commission, schedules which shall be open to the public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls and charges shown on such schedules shall not exceed the rates, tolls and charges in force at time of passage of this act. Every public utility shall file with and as a part of such schedule, all rules and regulations, that in any manner affect the rates charged or to be charged for any service. A copy of so much of said schedule as the commission shall deem necessary for the use of the public, shall be printed in plain type, and kept on file in every station or office of such public utility, where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and as can be conveniently inspected.

(b) When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner, be printed and filed with the commission and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as prescribed in section 11 (a).

(c) No change shall thereafter be made in any schedule, including schedules of joint rates, except upon twenty days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect; provided, that the commission upon application of any public utility, may prescribe a less time within which a reduction may be made; provided, however, that no advance or reduction of existing schedules shall be made without the concurrence of the commission. Copies of all new or amended schedules shall be filed and posted in the stations or offices of public utilities as in the case of original schedules. The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

Greater or Lesser Charges Than Those Prescribed—Rebates and Privileges.

Section 12. It shall be unlawful for any public utility to charge, demand, collect or receive a greater or less compensation for any service per-

formed by it within the state, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls and charges until the same are changed, as provided in this act. It shall likewise be unlawful for any public utility to grant any rebate, concession or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges or payments, and any violation of the provisions of this section shall subject the violator to the penalty prescribed in section 8 of this act. This, however, does not have the effect of suspending, rescinding, invalidating or in any way affecting existing contracts.

Classifications of Service.

Section 13. The commission may prescribe classifications of the service of all public utilities, and such classifications may take into account the quantity used, the time when used and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls and charges to such classifications.

Rules as to Inspections—Public Hearings.

Section 14. The commission shall have the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities, and other parties before it. All hearings shall be open to the public.

Inquiry into and Investigation of Management of All Public Utilities.

Section 15. (a) The commission shall have authority to inquire into the management of the business of all public utilities and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

(b) The commission or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand have the right to inspect the books, accounts, papers, records and memoranda of any public utility and to examine under oath, any officer, agent or employee of such public utility in relation to its business and affairs.

(c) Any person, other than one of said commissioners who shall make such demand, shall produce his authority to make such inspection.

(d) The commission may require by order or subpoena, to be served on any public utility, in the same manner that a summons is served in a civil action in the district court, the production, within this state, at such time and place as it may designate, of any books, accounts, papers or records kept by such public utility in any office or place without the state of Montana, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction.

(e) Any public utility failing or refusing to comply with any such order or subpoena, shall be subject to the liability named in section 8 of this act.

Employment of Engineer and Other Help.

Section 16. The commission is authorized to employ an engineer at a salary of not to exceed twenty-four hundred (\$2400) dollars per annum, also examiners, experts, clerks, accountants or other assistants as it may deem necessary, at such rates of compensation as it may determine upon.

Complaints Against Public Utility—Hearing.

Section 17. (a) Upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society or club, or by any body politic, or municipal organization, or association or associations, the same being interested, or by any person or persons, firm or firms, corporation or corporations, provided such persons, firms or corporations are directly affected thereby that any of the rates, tolls, charges or schedule or any joint rate or rates are in any way unreasonable or unjustly discriminatory or that any regulations, measurements, practices, or acts whatsoever affecting or relating to the production, transmission or delivery or furnishing of heat, light, water or power or any service in connection therewith or the conveyance of any telegraph or telephone message or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting such rates, tolls, charges, schedules, regulations, measurements, practice or act complained of, shall be entered without a formal hearing.

(b) The commission shall give the public utility and the complainant or complainants, at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

Subpoena to Witnesses.

Section 18. If any party ordered to appear before the commission as a witness shall fail to obey such order, the commission or any member, or the secretary thereof, may apply to the clerk of the nearest district court, for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena, and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed contempt of court and punishable accordingly.

Fixing Rates and Making Regulations on Hearing—Complaint by Public Utility.

Section 19. (a) If, upon such hearing and due investigation, the rates, tolls, charges, schedules or joint rates shall be found to be unjust, unreasonable or unjustly discriminatory, or to be preferential or otherwise in violation of the provisions of this act, the commission shall have the power to fix and order substituted therefor, such rate or rates, tolls, charges, or schedules, as shall be just and reasonable. If it shall in like manner be

found that any regulation, measurement, practice, act or service complained of, is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise in violation of the provisions of this act, or if it be found that the service is inadequate, or that any reasonable service cannot be obtained, the commission shall have power to substitute therefor such other regulations, measurements, practices, service or acts, and make such order relating thereto as may be just and reasonable.

(b) When complaint is made of more than one rate, charge or practice, the commission may in its discretion, order separate hearing upon the several matters complained of, and at such times and places as it may prescribe. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, regulations, practices and service, after a full hearing, as above provided, by order, make such changes as may be just and reasonable the same as if a formal complaint had been made.

(c) Any public utility may make complaint as to any matter affecting its own product or service with like effect, as though made by any mercantile, agricultural or manufacturing society, body politic, or municipal organization or person or persons. Notice of the hearing upon any such complaint shall be given to the persons interested in such manner as the commission may by rule prescribe.

Depositions of Witnesses.

Section 20. The commission or any party to any proceedings before it, may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

Records of Proceedings—Copies.

Section 21. A full and complete record shall be kept of all proceedings before the commission or its representatives on any formal investigation, and all testimony shall be taken down by the stenographer appointed by the commission. Whenever any complaint is served upon the commission as hereinafter provided for, the bringing of actions against the commission, before the action is reached for trial the commission shall cause a certified copy of all proceedings held and testimony taken upon such investigation, to be filed with the clerk of the court in which the action is pending.

Privilege of Witnesses—Perjury.

Section 22. No person shall be excused from testifying, or from producing books and papers in any proceedings based upon or growing out of any alleged violation of the provisions of this act, on the ground of, or for the reason that, the testimony or evidence documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture; but no person having so testified, shall be prosecuted or subjected to any penalty or forfeiture for, or on account of any transaction, matter or thing, concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

Refusal of Public Utility to Fill Blanks or Produce Evidence.

Section 23. Any officer, agent, or employee of any public utility who shall willfully fail or refuse to fill out and return any blanks as required by this act or shall willfully fail or refuse to answer any questions therein propounded, or shall knowingly or willfully give a false answer to any such questions, or shall evade the answer to such questions, where the fact in-

quired of is within his knowledge, or who shall, upon proper demand willfully fail or refuse to exhibit to any commission or any commissioners or any person also authorized to examine the same, any book, paper or account of such public utility which is in his possession or under his control, shall be subject to the penalty prescribed in section 8 of this act.

Investigation of Violation of Law—Duty of Attorney General and Prosecuting Attorneys.

Section 24. The commission shall inquire into any neglect or violation of the laws of this state by any such public utility as hereinbefore defined, doing business therein, or by the officers, agents, or employees thereof, and shall have the power, and it shall be its duty, to enforce the provisions of this act, and report all violations thereof to the Attorney General; upon the request of the commission it shall be the duty of the Attorney General or the prosecuting attorney of the proper, or any county, to aid in any investigations, prosecutions, hearing or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

Enforcement of Rates or Charges.

Section 25. All rates, fares, charges, classifications and joint rates fixed by the commission shall be enforced, and shall be prima facie lawful, from the date of the order until changed or modified by the commission, or in pursuance of section 26 of this act. All regulations, practices and service, prescribed by the commission, shall be enforced and shall be brought for that purpose, pursuant to the provisions of section 27 of this act, or until changed or modified by the commission itself upon satisfactory showing made.

Action to Set Aside Rates or Charges Fixed by Commission.

Section 26. Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or services, may within ninety (90) days commence an action in the district court of the proper county against the commission and other interested parties as defendants to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice or service fixed in such order is unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within thirty (30) days after the service thereof whereupon such action shall be at issue and stand ready for trial upon twenty (20) days' notice to either party.

All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to said commission.

(a) No injunction shall issue suspending or staying any order of the commission except upon application to the court or judge thereof, notice to the commission having been first given and hearing having been had thereon; provided, that all rates fixed by the commission shall be deemed reason-

able and just, and shall remain in full force and effect until final determination by the courts having jurisdiction.

(b) If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen (15) days from the date of such transmission. Upon receipt of such evidence the commission shall consider the same and may modify, amend, or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

(c) If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rescinded upon such original order.

(d) Either party to said action within sixty (60) days after service of a copy of the order or judgment of the court may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

(e) In all actions under this act the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be.

Investigation of Accidents—Report as to Accidents.

Section 27. The commission or some member thereof, or some person deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state, resulting in death, or injury to any person of such gravity as to require the attention of a physician or surgeon. The testimony taken at such hearing shall be transcribed and filed in the office of the commission.

(a) It is hereby made the duty of every public utility operating within this state, promptly upon the occurrence of any accident, such as is mentioned above, to report by telegraph followed by written report, the same to the commission, in which report shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. The commission shall prescribe forms for the purpose of making such written reports. Reports of accidents as referred to in this section shall be included in the commission's annual report to the Governor.

Public Utility Violating Law or Failing to Comply With Order.

Section 28. If any public utility shall violate any provision of this act, or shall do any act herein prohibited, or shall fail, or refuse to perform any duty enjoined upon it, or upon failure of any public utility to place in operation any rate or joint rate or do any act herein prohibited, for which a

penalty has not been provided, or shall fail, neglect or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure or refusal, such public utility shall be subject to the penalty prescribed by section 8 of this act.

Verification of Reports and Statements—Perjury.

Section 29. Every annual report, record or statement required by this act to be made to the commission shall be sworn to by the proper officer, agent or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record or statement, shall be deemed perjury, and the person making such false oath shall, upon conviction, be punished as in the case of other perjuries.

Recovery of Forfeitures and Penalties.

Section 30. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state of Montana in the district court of any county having jurisdiction of the defendant. The Attorney General of Montana shall be the counsel in any proceeding, investigation, hearing or trial, prosecuted or defended by the commission, as also shall any prosecuting attorney selected by said commission or other special counsel furnished said commission in any county where such action is pending.

Mandamus, Injunction and Other Remedies.

Section 31. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this act and of the orders of the commission by proceedings in mandamus, injunction, or by other civil remedies.

Traveling Expenses of Commission.

Section 32. The commission and secretary and such clerks and experts as may be employed, shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expenses and be approved by the chairman of the commission.

Effect of Invalidity of Part of Act.

Section 33. Each section of this act and every part of each section are hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or inoperative for any cause, shall not be deemed to affect any other section thereof.

Appropriations.

Section 34. For the purpose of carrying out the provisions of this act, the sum of \$15,000 is hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

Section 35. All acts and parts of acts in conflict with this act are hereby repealed.

Section 36. This act shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 4, 1913.

Editorial Notes.

Right of public service commission to regulate naming of railroad stations. Ann. Cas. 1914A, 831.
 Regulation by state or railroad com-

mission of switching charge. Ann. Cas. 1914B, 366.

Right of city which has fixed rates for public service corporation to object to change thereof by state or public commission. Ann. Cas. 1913A, 89.

SALARIES OF STATE OFFICERS AND EMPLOYEES.

Chapter 40, Laws 1915, page 57.

"An act to amend section 1 of chapter 81 of the Laws of the Twelfth Legislative Assembly, entitled 'An act prescribing the salary of certain appointive and deputy state officers, clerks, stenographers, and employees at the state capitol.'"

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That section 1 of chapter 81 of the Laws of the Twelfth Legislative Assembly be, and the same is hereby amended so as to read as follows:

Section 1. The annual compensation allowed to the following named deputy state officers, clerks, stenographers, and employees at the state capitol is as follows:

Office of Governor.

Stenographer \$1500

Office of Secretary of State.

Deputy \$2100

Stenographer and recorder \$1800

Office of State Treasurer.

Deputy \$2100

Clerk \$1800

Office of State Auditor.

Deputy \$2100

Stenographer \$1200

Bookkeeper \$1200

Chief clerk \$1800

Superintendent of Public Instruction.

Deputy \$2100

Stenographer \$1200

Clerk \$1200

Railroad Commission.

Rate clerk \$2500

Inspector \$1800

Stenographer \$1200

State Veterinarian.

Deputy \$1500

Stenographer \$1200

Department of Agriculture and Publicity.

Clerk \$2100

Stenographer \$1200

Department of Labor and Industry.

Clerk	\$2100
Stenographer	\$1200

Mine Inspector.

Deputy	\$2400
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Adjutant General.*

Adjutant General	\$1800
Stenographer (from Department Child and Animal Protection)	\$ 300

Consolidated Boards.

(Boards of Prison Commissioners, Insane Commissioners, Pardons, and Equalization.)

Clerk	\$2100
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State Law Library.

Librarian	\$2500
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State Historical Library.

Librarian	\$2100
First assistant	\$1200
Second assistant	\$1200

Board of Horticulture.

Secretary	\$1000
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State Board of Examiners.

Clerk	\$2100
State accountant	\$2100

State Board of Health.

Secretary	\$3000
Stenographer	\$1200

Bureau of Child and Animal Protection.

Secretary	\$2500
First deputy	\$1800
Second deputy	\$1800
Third deputy	\$1800
Fourth deputy	\$1800
Fifth deputy	\$1800
Sixth deputy	\$1800
Stenographer	\$ 900

State Fair.

Secretary	\$3000
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Supreme Court.

Stenographer	\$2400
Marshal	\$1500
Attendant	\$1200

*The salary of the Adjutant General of the state of Montana is the sum of two thousand four hundred (\$2,400) dollars per annum, payable in monthly installments,

and he shall receive his actual and necessary expenses incurred in the performance of his duties. [Approved March 5, 1915; Laws 1915, c. 85, p. 111.]

Capitol Employees.

Engineer	\$135 per month
Assistant Engineers	\$4 per day
Head Janitor	\$3 per day

(\$10 additional per month.)

Janitors, each	\$3 per day
Night Watchman	\$3 per day

Land Department.

Deputy register state lands	\$2100
Assistant secretary Carey Land Act board	\$1800

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This act shall be in full force and effect sixty days after its passage and approval.

Approved February 27, 1915.

PERMITS TO CUT TIMBER.

Chapter 119, Laws 1911, page 260.

"An act authorizing the issuance of permits to cut and take away timber for domestic purposes from state timber lands."

Section 1. The State Board of Land Commissioners are hereby empowered to authorize the state land agent or the state forester to issue permits without notice to bona fide citizens of the state of Montana authorizing such citizens to cut and take away from the timber lands of the state, timber in small quantities to be used by such citizens for domestic, building and fuel purposes only, under such rules and regulations as to price and quality as may be prescribed by the said board.

Approved March 7, 1911.

LAND BETWEEN HIGH AND LOW WATER MARK.

Chapter 124, Laws 1911, page 339.

An act regulating the leasing of lands, which are, or may be owned by the state of Montana, lying between low and high water mark of any navigable lake within the state of Montana, and forbidding the sale or leasing thereof.

Section 1. None of the lands lying between the low-water mark and high-water mark of any navigable lake within the state of Montana, shall ever be sold or leased by the state of Montana, or the State Board of Land Commissioners, or any officer or board of said state; provided, however, that where the state owns land bordering on any navigable lake, the ownership of the state and its power to sell or lease such land, shall be the same as that exercised by individual owners of like land.

Approved March 7, 1911.

SALE OF IRRIGABLE LANDS.

Chapter 123, Laws 1911, page 338.

An act to regulate the sale of irrigable state lands capable of reclamation under any canal or proposed canal or other irrigation system.

Section 1. In order to assist in the reclamation and settlement of arid lands in this state, and for the purpose of co-operating with and aiding in the construction of works for the irrigation and reclamation of arid lands, all lands now or hereafter owned by the state and designated as irrigable lands under any existing or proposed irrigation system in Montana shall be disposed of in farm units and at public sale.

Section 2. Any irrigation company or association now operating in this state, or which shall hereafter propose to operate for the reclamation of arid lands, shall file with the State Board of Land Commissioners a petition asking that an order be made and entered withdrawing from sale all irrigable state lands embraced within the irrigation project until the completion of the irrigation system whereby such state land may be reclaimed.

There shall be filed, accompanying said petition, a plat showing the location of the lands owned by the state with reference to the proposed or existing irrigation system, and satisfactory evidence must be submitted to the board showing the ability of the corporation, association, person or persons to complete the irrigation system and provide a sufficient supply of water to reclaim the state lands embraced in the project, and also showing that the state lands are so located that they can be properly irrigated from such irrigation system.

After investigating the subject, if the Board of Land Commissioners be satisfied, that lands owned by the state will be benefited, and that the withdrawal of same from sale until the completion of any irrigation project will benefit and assist such project, it shall make and enter an order withdrawing such lands from sale in accordance with the terms of this act.

Such order may thereafter be revoked by said board if in its judgment and discretion the continuance of the withdrawal of such lands is not of benefit to the state, the public, or aidful to the irrigation project.

Section 3. At any time after such withdrawal, the State Board of Land Commissioners shall upon the application of the said corporation, association, person or persons, having such withdrawal made, offer the said lands, or the part thereof, covered by such application for sale at public auction in such tracts or parcels as may be designated in such application not exceeding one hundred and sixty acres to one person, corporation or association.

Section 4. After withdrawal of any state lands from sale under the terms of this act, the State Board of Land Commissioners may if it deems it to the best interests of the state, lease said lands or any part or portion thereof.

Approved March 7, 1911.

SCHOOL LANDS WITHIN FOREST RESERVE.

Chapter 78, Laws 1911, page 145.

An act to cede certain state school lands to the United States in lieu of other lands and providing for the selection of the lieu lands.

Section 1. All sections of lands numbered sixteen and thirty-six in surveyed townships and all unsurveyed sections which, when surveyed will be sections sixteen and thirty-six, within the boundaries of the national forests within this state shall be deemed and held ceded to the United States as soon as an act shall be passed by the Congress and approved by the President ceding to the state of Montana an equivalent number of sections of land situated in forest reserves and principally valuable for the timber which is growing thereon, which lands shall be known as lieu timber lands, and which lieu timber lands shall be selected as other state lands are selected from the public domain.

Section 2. In selecting the lieu timber lands the State Board of Land Commissioners shall select the same as nearly as practicable in one compact body, or, if that is not practicable, then in one or more compact bodies, to the end that the same may be managed and controlled as a state forest, and the selections may be made from land in any county or counties of the state.

Approved March 3, 1911.

SCHOOL LANDS WITHIN FOREST RESERVE.

Chapter 81, Laws 1915, page 107.

"An act authorizing the State Land Board to contract and agree with the United States for the waiver of the state's right to unsurveyed school sections in forest reserves, and to accept lands in lieu thereof, and validating agreements heretofore made for that purpose."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That the State Board of Land Commissioners of the state of Montana, be and are hereby authorized and empowered to enter into contracts or agreements with the United States, or any department thereof, having jurisdiction, waiving and relinquishing to the United States any and all rights of the state of Montana in and to sections sixteen (16) and thirty-six (36) of each township, when said sections are situated within a Federal Forest Reserve, and are at the date of such contract or agreement unsurveyed. Provided, that the state of Montana shall in lieu of the rights so waived and relinquished, receive from United States other lands equal in area or value, and all contracts or agreements heretofore entered into between the State Board of Land Commissioners of the state of Montana and the United States or any department thereof relative to the waiving by the state of Montana of its rights to sections sixteen and thirty-six in any township in said state and the selection of lieu lands therefor by said state either according to area or value be and the same are hereby ratified, confirmed and validated. [Approved March 5, 1915; Laws 1915, c. 81, p. 107.]

FOREST RESERVE FUNDS.

Chapter 118, Laws 1909, page 165.

"An act to provide for the distribution to and among the various counties entitled thereto, of the money derived from forest reserves in the state of Montana, under an act of Congress approved June 30, 1906."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That the State Treasurer, for the purpose of carrying out the provisions of the "Agricultural Appropriation Bill, passed by Congress, and approved June 30, 1906," shall divide and distribute the money derived by the state of Montana thereunder, to wit: The sum of sixty-one thousand, nine hundred and forty-one dollars, and forty-six cents (\$61,941.46) among the various counties hereinafter named as herein provided, and for that purpose shall draw his warrants for the amounts herein specified, payable to the treasurer of the various counties, entitled thereto, as follows:

	Acres.	Amount.
Broadwater county.....	227,825	\$ 681.36
Beaverhead county	1,485,600	4,521.73
Lewis and Clark county.....	815,310	2,477.66
Cascade county	454,400	1,362.71
Custer county	675,173	2,044.07
Choteau county	63,920	185.82
Carbon county	416,013	1,238.83
Deer Lodge county.....	336,640	1,053.00
Flathead county	5,109,180	15,485.36
Fergus county	235,520	743.30
Gallatin county	835,305	2,539.60
Jefferson county	525,520	1,610.48
Madison county	1,052,280	3,220.96
Meagher county	739,550	2,229.89
Missoula county	1,394,590	4,273.96
Park county	894,970	2,725.42
Powell county	611,840	1,858.25
Rosebud county	60,800	185.83
Ravalli county	1,164,880	3,530.66
Silver Bow county.....	186,240	557.47
Sanders county	1,104,640	3,344.84
Sweet Grass county.....	456,320	1,362.71
Teton county	852,480	2,601.54
Granite county	703,680	2,106.01

Section 2. The said county treasurers upon the receipt of the said amounts of money shall divide the same equally between and credit it to the General School Fund, and the General Road Fund of their several counties.

Section 3. Hereafter, and until otherwise provided by law, the State Auditor, as soon as practicable after money is received by the State Treasurer, under and by virtue of the provisions of the act of Congress referred to in section 1 of this act, shall make division and distribution of such money among and to the various counties of the state in the proportion that the number of acres of land of each county included within, and forming a part, of forest reserves bears to the total number of acres of land included within,

and forming a part, of all forest reserves within the state of Montana, such number of acres to be ascertained and determined from the report of the district forester, which report shall be certified as correct by the State Engineer. As soon as the several amounts due the various counties is ascertained, the State Auditor shall draw his warrants for said several sums, payable to the treasurer of the county entitled thereto, and said county treasurer, upon the receipt of said sum of money, shall make distribution thereof in the manner provided in section 2 of this act.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

Section 5. This act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1909.

FOREST RESERVE FUND DISTRIBUTION.

Chapter 26, Laws 1915, page 35.

"An act to provide for the distribution among the several counties of Montana containing United States forest reserve lands, all forest reserve moneys received from the general government for the benefit of such counties: To designate the fund in which the county treasurer in each county shall place said payments, and to fix the percentage of such payments in each fund; to correct errors of distribution of such funds heretofore or hereafter made."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The State Treasurer, for the purpose of carrying out the provisions of an act of Congress of May 23, 1908, 35 United States Statutes at Large, page 260, and all acts subsequent thereto, shall divide and distribute all forest reserve moneys received by the state of Montana thereunder, to and among the several counties entitled thereto, and pay the same to the several county treasurers of such counties within thirty days after receiving same, as directed by the State Auditor.

Section 2. The State Auditor shall apportion said forest reserve funds between the several counties as follows, to wit:

All funds received from each forest reserve shall be apportioned between the counties in which such forest reserve is situated in proportion to the acreage of such forest reserve in each county, and the State Treasurer shall pay the several amounts so apportioned to the respective counties.

Section 3. The forest reserve funds so apportioned to each county shall be apportioned by the county treasurer in each county between the several funds as follows:

To the general road fund, sixty-six and two-thirds per cent of the total amount received. To the common school fund thirty-three and one-third per cent of the total sum received.

Section 4. In the event of any error, or errors, heretofore or hereafter made in the apportionment or distribution of said forest reserve funds, such error, or errors, shall be corrected by the State Auditor and State Treasurer equalizing future payments to the several counties so that the total proportionate sum received by each county shall be as fixed in section 2 of this act.

Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

Section 6. This act shall take effect and be in force from and after its passage.

Approved February 25, 1915.

STATE LANDS.

Chapter 147, Laws 1909, page 289.

An act providing for the management and control of the lands now owned by or hereafter to be acquired by the state of Montana, including the sale and rental thereof, and the management, protection, and disposition of the timber growing thereon and the coal, oil, and minerals therein; provided for the management and control of the funds realized from the sale and rental of state lands and the products thereof; naming and providing for certain officers subordinate to the State Board of Land Commissioners and prescribing their duties and compensation; providing for the acquisition of water rights for use upon state lands; and defining and providing for the punishment of certain offenders for violating the provisions of this act.

Be it enacted by the Legislative Assembly of the State of Montana:

State Board of Land Commissioners.

Section 1. The Governor, Superintendent of Public Instruction, Secretary of State, and Attorney General, being constituted a State Board of Land Commissioners by the Constitution of this state, as such board shall have direction and control of all lands belonging to the state, to manage the same as the best interests of the state shall require, not inconsistent with the provisions of this act and the Constitution of the state. A majority of the board shall constitute a quorum for the transaction of business.

Inasmuch as the State Board of Land Commissioners is a constitutional agency charged with the administration of a public trust, and is vested with discretionary powers in that behalf, and inasmuch as its

discretion is invoked whenever it is called upon to confirm or reject a sale, the courts cannot compel it to exercise that discretion in any particular way. *State v. Stewart*, 48 Mont. 350, 137 Pac. 854.

President and Meetings.

Section 2. The Governor shall be president of the board, but in his absence from any meeting, the board may elect any of its members president pro tempore, who shall preside at such meetings. The board shall hold regularly quarterly meetings in the State Land Office on the second Wednesday of March, June, September and December of each year, and may hold such other meetings as the board may direct; and may meet at any time on call of the president or of a majority of the board. The meetings of the board shall be regulated by such rules as the board may adopt.

Minutes of Board.

Section 3. The State Board of Land Commissioners shall cause a complete record of its proceedings to be kept in a suitable book, and shall preserve all important documents and papers pertaining to state lands.

Register and His Duties.

Section 4. The Governor by and with the advice and consent of the Senate, shall appoint a register of state lands, who is not a member of the

said board, whose term of office shall be four years, or until his successor is appointed and qualified and whose salary shall be twenty-five hundred (\$2500) dollars per annum and actual necessary expenses while engaged in outside work connected with his office. It shall be the duty of the register to keep the records of the State Board of Land Commissioners; to make and sign all leases of state lands issued by him, and to make out and countersign all patents issued by the said board to the purchasers of state lands, and keep a suitable record of the same; to file and preserve bonds of lessees and those given by the purchasers of state lands to secure deferred payments; to make and deliver to purchasers of state lands suitable certificates of purchase; to have the custody of the seal of the State Board of Land Commissioners; to be the secretary of, and to keep the minutes of said board; to receive all moneys payable to the state on account of state lands leased or sold, and all moneys payable under the provisions of this act, and to pay them over to the State Treasurer on the first and fifteenth days of each month; and shall perform such other duties, concerning the land affairs of the state, as the said board may direct. The register shall be provided with a suitable office, office furniture, stationery and postage by the Secretary of State. On or before the first day of December in each year, he shall make a report of the business of his office, the transactions of the State Board of Land Commissioners, and the land affairs of the state, showing by tablets the lands belonging to the several funds of the state, the quantity sold, the quantity leased and the receipts of his office from all sources; and said report shall contain any such other items or information concerning state lands as the State Board of Land Commissioners or said register may deem worthy of publication. Before assuming the duties of his office, the said register shall give bond in the sum of one hundred thousand (100,000) dollars, conditioned for the faithful discharge of his duties, and said bond shall be approved by the said Board of Land Commissioners, and filed with the Secretary of State; and the cost of said bonds shall be paid by the state out of the land grant income funds.

Deputy Register.

Section 5. The Governor, by and with the advice and consent of the Senate, shall appoint a deputy register at a salary of eighteen hundred (1800) dollars per annum and actual necessary expenses when engaged in outside work, whose duties shall be those of assistant register, and who shall perform all of the duties of register during the absence or disability of that officer. The deputy register shall give a good and sufficient bond, to be approved by the State Board of Land Commissioners, conditioned for the faithful performance of the duties of his office, the amount of said bond to be fixed by the said board and filed with the Secretary of State. The deputy register shall perform such other duties as may be prescribed by the State Board of Land Commissioners.

Fees.

Section 6. The register of state lands is hereby authorized and empowered and it is hereby made his duty to collect the fees herein fixed, for work done in his office, whether by himself or any member of his official force, to wit:

Filing application to lease	\$.50
Filing application to purchase .....	.50
Accepting and approving bond.....	1.00

Issuing lease	1.00
Issuing permit to cut live timber.....	1.00
Issuing each patent of certificate of purchase.....	2.00
Approving and recording assignment of lease or certificate of sale	1.00
Patent for town lot.....	2.00
Deed for right of way, easement, etc.....	3.00
Certified copy of certificate of purchase, lease or patent.....	2.00

Certified copy of any other instrument, or of the records of his office, shall be furnished at the rate of twenty cents per folio, and one dollar for the certificate.

All the aforesaid fees shall be paid in advance to the register of state lands.

In case any application to lease or to purchase is rejected the fee paid for filing such application shall be returned to the applicant.

State Land Agent.

Section 7. The Governor, by and with the advice and consent of the Senate, shall appoint a state land agent, whose salary shall be twenty-five hundred (2500) dollars per annum, and actual necessary expenses while engaged in outside work connected with his office, and whose term of office shall be four years, or until his successor shall be appointed and qualified; and he shall give a bond to the state in the sum of ten thousand (10,000) dollars, to be approved by the board and filed with the Secretary of State.

Duties of State Land Agent.

Section 8. The state land agent shall under the direction and control of the State Board of Land Commissioners, do all acts required of him to be performed by the said board, and he shall do and perform all of the field work in the selection, examination, appraisement and the reappraisement of state lands, except timber lands, and other outside work required to be done under the provisions of this act, and not herein otherwise provided for, under the direction of the register of state lands. He shall, under the direction of the State Board of Land Commissioners, select and locate all lands except timber lands, which are now, or may hereafter be granted to this state by the general government for any purpose whatever, and he shall select lands in lieu of those sold or otherwise disposed of by the United States in sections 16 and 36, and said lieu lands shall be selected in legal subdivisions. Upon making such selection, the state land agent shall report to the State Board of Land Commissioners fully in regard to the location and character of the lands selected; and he shall certify all such selections to the State Board of Land Commissioners. And the register of state lands shall take such necessary steps to secure the approval of such selections by the proper officers of the general government. [Amendment approved March 7, 1911; Laws 1911, c. 118, p. 254.]

State Forestry.

Section 9. The Governor, by and with the advice and consent of the Senate, shall appoint a state forester, who shall be skilled in the science of forestry, whose salary shall be twenty-five hundred (2500) dollars per annum, and actual necessary expenses while engaged in outside work, connected with his office, and whose term of office shall be four years, or until his successor shall be appointed and qualified, and he shall give a bond to the state in the sum of ten thousand (10,000) dollars, to be approved by

the board and filed with the Secretary of State; and he shall be a civil executive officer.

Duties of State Forester.

Section 10. The state forester shall, under the direction and control of the State Board of Land Commissioners, do all the field work in the selection, location, examination, appraisalment, and reappraisalment of state timber lands, whether now belonging to the state or hereafter granted to the state; he shall do all acts required of him to be performed by the said board, and under the direction of said board shall have general charge of the timber lands of the state. He shall act as secretary of the forestry board. He shall, under the supervision of the State Board of Land Commissioners, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all fire wardens of the state, and direct and aid them in their duties; direct the protection and improvement of state parks and forests; take such action as is authorized by law to prevent and extinguish forest, brush and grass fires; enforce the laws pertaining to forest and brush-covered lands and prosecute for any violation of such laws. He shall deliver a course of at least six lectures on practical forestry to the students attending the State University, the State Agricultural College, and the State Normal School, during each school year. He shall prepare annually a report to the Governor on the progress and condition of the state forest park, and recommend therein plans for improving the state system of forest protection, management and replacement. He shall furnish notices, printed in large letters on cloth, calling attention to the danger from forest fires, and to the forest fire and trespass laws and their penalties. Such notices shall be posted by the fire warden in conspicuous places in the several counties of the state, and particularly in brush and forest-covered country, at frequent intervals along streams and lakes frequented by tourists, hunters, and fishermen, at established camping sites, and in every postoffice in the forest region. [Amendment approved March 7, 1911; Laws 1911, c. 118, p. 254.]

Fire Wardens.

Section 11. The state forester shall appoint in such number and localities as he deems wise, public-spirited citizens to act as volunteer fire wardens. Every sheriff, under-sheriff, deputy sheriff, game warden and deputy game warden, shall be ex officio a fire warden, but shall not receive any additional compensation by reason of the duties hereby imposed, and they shall be deemed paid fire wardens under the terms of this act. The supervisors and rangers of the federal forest reserves within this state, whenever they formally accept the duties and responsibilities of fire wardens, may be appointed volunteer fire wardens, and shall have all the powers given to fire wardens by this act. The fire wardens shall promptly report all fires to the State Board of Forestry, take immediate and active steps toward their extinguishment; report any violation of forest laws; and assist in apprehending and convicting offenders.

Powers of Fire Wardens.

Section 12. The state forester, and all fire wardens, shall have the power of peace officers to make arrests without warrants for violations, in their presence, of any state or federal forest laws, and no fire warden shall be liable for civil action for trespass committed in the discharge of their duties. Any fire warden who has information which shows, with reason-

able certainty, that any person has violated any provision of such forest laws shall immediately take action against the offender, by making complaint before the proper magistrate, or by information to the proper county attorney and shall obtain all possible evidence pertaining thereto. Failure on the part of any paid fire warden to comply with the duties prescribed in this act, shall be a misdemeanor, and punishable by a fine of not less than twenty dollars, nor more than one thousand dollars, or imprisonment in the county jail for not less than ten days nor more than twelve months, or by both such fine and imprisonment; and upon his conviction the district court wherein he is convicted shall forthwith declare his office vacant, and notify the proper appointing power thereof.

Additional Powers of Fire Wardens.

Section 13. All fire wardens shall have authority to call upon any able-bodied citizen between the ages of eighteen and fifty years, resident in the vicinity, for assistance in putting out fires; and any such person who refuses to obey such summons, except for good and sufficient reason, is guilty of a misdemeanor, and upon conviction, shall be fined in a sum not less than fifteen nor more than fifty dollars, or imprisonment in the county jail not less than one nor more than thirty days, or both such fine and imprisonment; provided, that no citizen shall be called upon to fight fire a total of more than five days in one year.

Duties of Fire Wardens.

Section 14. The state forester, assistant forester, and all fire wardens (except volunteer wardens), under such rules and regulations as the State Board of Land Commissioners may provide, shall protect the timber of the state, and especially the timber owned by the state, from destruction by fire, and for such purpose, in emergencies, may employ men and incur other expenses, when necessary; provided, that no fire warden shall incur any expense in excess of fifty dollars, without express authority of the State Board of Land Commissioners.

Expenses of State Forester.

Section 15. That the actual expenses and expenditures of the state forester, assistant forester and fire wardens necessarily incurred under this act, shall be paid in the same manner as are other expenses incurred in managing the state lands.

Penalty for Destroying Notices.

Section 16. Any person who shall destroy, deface, remove or disfigure any sign, post or warning notice posted under the provisions of this act shall be guilty of a misdemeanor, and punishable upon conviction, by a fine of not less than fifteen dollars and not more than two hundred and fifty dollars, or imprisonment in the county jail for a period of not less than ten days nor more than three months, or by both such fine and imprisonment.

Prosecutions.

Section 17. Whenever an arrest shall be made for any violation of the provisions of this act, or whenever any information of such violations shall be lodged with him, the county attorney of the county in which this act was committed must prosecute the offender or offenders if in his judgment the facts warrant the same. If any county attorney shall fail to comply with the provisions of this section he shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars nor

more than one thousand dollars, and, upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant, and notify the proper appointing power thereof. Actions against the county attorney shall be brought by the Attorney General in the name of the state. The penalties of this section shall also apply to any magistrate, with proper authority who refuses or neglects to cause the arrest and prosecution of any person or persons, when a complaint under oath of a violation of any of the provisions of this act has been lodged with him.

Duties of State Engineer.

Section 18. It shall be the duty of the state engineer, among other things, to examine all mineral and coal lands and, under the direction of the State Board of Land Commissioners, to make settlement with the lessees of coal lands, and to make examination of any of the lands of the state, when directed by the State Board of Land Commissioners, or by the register of state lands, for the purpose of ascertaining whether the same contain coal or other minerals.

Contest Board.

Section 19. The register of state lands, together with the state land agent, and the state engineer, shall constitute a contest board, of which the register of state lands shall be chairman. A majority of said board shall constitute a quorum for the transaction of business, and for rendering any decision. It shall be the duty of the register in any and all contest cases, when hearings are necessary and witnesses may be required to be examined, to set a date for hearing such cases. He shall duly advise the contestants, or their authorized attorneys, of the date set for such hearings, and any member of said board is hereby empowered to administer oaths, and said board may hear and receive evidence, after the manner and procedure established by the United States, in the district land offices, or in accordance with the rules that are or may be adopted by the board governing such cases. All evidence given and provided in such cases before the contest board, shall be fully transcribed and arranged at the cost of the parties to the contest, which costs shall be taxed by the contest board in such a manner as they may deem equitable, and such testimony shall form a part of the records of the office of the State Board of Land Commissioners. Whenever said contest board shall deem it advisable they may initiate contests on behalf of the state and may order hearings in any matter to protect the interests of the state; and shall hear all controversies between different persons, or between the state and any person, respecting state lands, except as otherwise herein provided, and all such matters shall be heard and determined as other contest cases. As soon as convenient after such hearings, the said contest board shall present a full transcript of the proceedings, together with their decision upon the merits of the case, to the State Board of Land Commissioners, but such decision shall not be final until approved by the State Board of Land Commissioners. Any party to an action or proceedings before said contest board, who is dissatisfied with the decision of the contest board, within thirty days after notice of such decision, and under such rules as the State Board of Land Commissioners may adopt, may appeal from said decision to the State Board of Land Commissioners.

Provided, that if any member of the said contest board is disqualified in any case, by reason of being a witness or by being instrumental in the

bringing of the case, the Governor, as president of the State Board of Land Commissioners, shall designate some other state officer or officers to act on the contest board in place of such disqualified member or members.

Forestry Board.

Section 20. The register of state lands, together with the state land agent and the state forester, shall constitute a forestry board, of which the register of state lands shall be chairman. A majority of said board shall constitute a quorum for the transaction of business.

Duties of Forestry Board.

Section 21. It shall be the duty of the forestry board to ascertain the methods of reforesting the denuded forest lands of the state; to prevent forestry waste, and the destruction of forests by fire, to manage the forests of the state on forestry principles, to encourage private owners in preserving and growing timber, and to conserve forest tracts around the headwaters and on the watersheds of the watercourses of the state; it shall make reports of its doings and recommendations to each session of the legislature, and, from time to time, with approval of the State Board of Land Commissioners, publish, for popular distribution, such of its conclusions and recommendations as may be of public interest and concern.

The state board of forestry may reforest the watersheds of the state and expend such sums of money therefor as may be appropriated for that purpose by the legislative assembly.

Clerks and Salaries, How Paid.

Section 22. The State Board of Land Commissioners shall have power to appoint one clerk whose salary shall be such sum as the board may fix and allow, not exceeding the sum of fifteen hundred (\$1500) dollars per annum who shall give a bond to the state in such sum as the Board of Land Commissioners may designate, and he shall act as clerk of the register, of the state land agent, and of the state forester, without extra compensation; and said board may employ all such other office force as may be necessary to carry out the provisions of this act, and may designate one of said office force as receiving clerk and may require such receiving clerk to give such bond as the board may order, and to make purchase of all necessary books, plats and other supplies. [Amendment approved March 7, 1911; Laws 1911, c. 118, p. 254.]

Salaries, How Paid.

Section 23. The salary of the register of state lands and his deputy, of the state land agent, and his assistants, the state forester, and his assistant, the clerk of the State Board of Land Commissioners, together with the pay of all the assistants and clerks in the state land office, shall be paid out of the moneys in the several land grant income funds, and shall be apportioned among the several funds in proportion to the amount of land in each of the land grants from which the several funds are derived. All such salaries shall be paid monthly out of the land grant income funds, and apportioned in December of each year among the several funds by an order of the State Board of Land Commissioners, directed to the State Auditor and to the State Treasurer.

Assistants to Land Agent.

Section 24. The State Board of Land Commissioners, is hereby authorized to appoint such competent persons at such time or times as may be

deemed necessary, to assist the state land agent in selecting, appraising, and reappraising the state lands, the timber thereon, and they shall draw pay only when actually engaged in field work, and shall hold office at the pleasure of the board, and their pay shall be not to exceed one hundred twenty-five (\$125) per month, together with actual necessary expenses; provided, that said board may pay such salaries to timber cruisers or estimators as may be necessary to secure the most efficient service.

Assistant Forester.

Section 25. The State Board of Land Commissioners is hereby authorized to appoint one assistant forester, with like qualifications as the state forester, at such time or times as may be deemed necessary, to assist the state forester in any of the duties of his office; and he shall draw pay only when actually engaged in the performance of such work, and shall hold office at the pleasure of the board, and his pay shall be not to exceed one hundred and fifty (\$150) dollars per month, together with actual necessary expenses while engaged in outside work connected with the office. He shall give such bond for the faithful performance of his duties as the State Board of Land Commissioners may require.

Classification of Lands.

Section 26. The State Board of Land Commissioners must provide as complete a set of plats and tract-books as may be necessary, of the surveyed lands of the state; must ascertain what part of the unappropriated government lands in the state are capable of irrigation and the source and reliability of the water supply for the same, and must select such lands as may be suitable under the various grants made by the United States to the state, and must classify the lands upon the maps and plats so prepared according to the classification made by the Constitution of the state of Montana, to wit:

1. Grazing lands. 2. Timber lands. 3. Agricultural lands. 4. Lands lying within the limits of any town or city, or within three miles of said limit.

Subdivision 3 of such classification shall be subclassified into (a) agricultural lands not susceptible of irrigation, and (b) agricultural lands not susceptible of irrigation; and subdivision 4 of such classification shall be subclassified into: (a) Lands within the limits of any incorporated city, and (b) lands not within the limits of any incorporated city.

The State Board of Land Commissioners shall, as often as they deem it necessary, reclassify and reappraise the lands of the state, so that at no time must any of the lands be sold under a different classification from that to which they actually belong.

The maps, plats and tract-books prepared by the board as herein provided, shall also contain a classification of the lands according to the respective funds, or state institutions, to which said lands belong, and the register must mark upon the maps and plats the name of the grant to which each tract belongs.

Records of Timber.

Section 27. The State Board of Land Commissioners shall cause to be kept accurate records showing the location, extent and character of all forest lands, and the kind and character of timber growing thereon and also an account of all timber sold, the person or persons to whom sold, the

amount of money received therefor, and the disposition of the moneys so received.

Coal Lands, What Deemed, and Selection.

Section 28. All coal areas in the state after final examination are defined by the United States Geological Survey, or other authority under the government of the United States, shall be recognized by the authorities of this state as coal lands, until otherwise determined; and no such lands shall be sold, but such lands may be leased by the state to any person or persons, company or corporation but only on a royalty basis as herein provided; provided, however, that the surface rights of such land may be sold or may be leased for either agricultural or grazing purposes, but any other state lands may be designated as coal lands by the State Board of Land Commissioners, and withdrawn, from sale when, in the opinion of the board, such lands contain coal.

Platting Lands in or Adjacent to City.

Section 29. Any state lands situated in, or adjacent to a city or town may be surveyed or laid off in lots or blocks, streets, alleys, avenues, highways, public squares and parks, in conformity with the laws of the state for the survey and platting of town sites and additions thereto; and the State Board of Land Commissioners must cause correct maps and plats of such lands to be made and recorded when so surveyed and platted, and not otherwise. The board may, in its discretion sell the same, or any part thereof, at public sale to the highest bidder. Each block or lot, as numbered and platted upon the maps, must be sold separately, but not until they have been appraised, and notice of the sale given in the same manner, and upon the same terms and conditions, as is herein provided for the sale of other state lands; provided, that such lots and blocks shall be sold only in alternate lots and blocks, and not more than one-half of any one tract of such lands shall be sold prior to the year 1910. Any other state lands described under the fourth subdivision of the classification of state lands in section 1 of article XXVII of the Constitution of Montana, may be divided into lots or tracts of five acres each or less, and platted and sold in the manner prescribed for the sale of other state lands, provided, that only alternate lots and tracts shall be sold and not more than one-half of any one tract of land subdivided must be sold prior to the year 1910, but the remaining lots or tracts which have been subdivided, platted and surveyed, may be leased under such terms and restrictions as may be prescribed by the board.

Reappraisement of Lots.

Section 30. All lots leased within the boundaries of any incorporated town or city, shall be reappraised at least every five years, and the lessee of all such lands shall pay a rental based upon such reappraisement, or forfeit the land so held; provided, said reappraisement shall not be less than the appraisement at which the same is under lease, except by order of the State Board of Land Commissioners; and, provided, that said board may in its discretion, offer said lots or lot for sale at any of the public sales held by said board, in the county where the said lots are located, upon the application of the lessee, but not otherwise, during the term of said lease, upon the same terms and in the same manner as though said lease had not been executed.

Grant to United States.

Section 31. Any land now or hereafter owned by the state of Montana and needed by the United States in its irrigation and reclamation work, shall, upon application made therefor to the State Board of Land Commissioners, be conveyed to the United States, at the minimum price of ten (10) dollars per acre; and there is hereby granted to the United States over all the lands now owned, or hereafter acquired by the state of Montana, a right of way for ditches, canals, tunnels, telephone and telegraph lines, now constructed, or to be constructed by the United States government, in furtherance of the reclamation of the arid lands, and that all conveyances of state lands shall contain a reservation of such right of way.

Right of Way for Highway.

Section 32. Right of way shall be granted by the State Board of Land Commissioners, over any of the lands of the state, to any county or city desiring to construct a public highway across the same; provided that the right of way must always follow sectional or subdivisional lines, if physically practicable; provided, that a duly attested and sworn copy of the official plat, in duplicate, made by the official county or city surveyor or engineer, shall first be filed with the board, together with a petition from the county or city officials setting forth the necessity of the same; and the aforesaid plat, when approved by said board, shall be and form the official plat of said highway; and the said plat shall show the amount of land taken by the proposed highway, and shall show the remainder of the land in each portion of each legal subdivision crossed by said proposed highway. One copy of said plat shall be retained by the state land office, and the other returned to the county or city from which it was received.

Right of Way for Public Use.

Section 33. The State Board of Land Commissioners may grant the right of way across or upon any portion of state lands, upon such terms as may be agreed upon, for any ditch, reservoir, railroad, private road, telegraph or telephone line, or for any other public use, as defined in the Code of Civil Procedure; provided, that this section shall not be construed to grant authority to convey any such land, except for the purposes above set forth, and, provided, further, that whenever lands granted for any of the purposes mentioned in this section, shall cease to be used for such purposes, said lands shall revert to the state, upon notice to that effect to the person to whom such grant was made, served at his last known postoffice address.

Board may Sell Lands.

Section 34. The State Board of Land Commissioners may direct the sale of any state lands, except as provided in this act, in such parcels, to actual settlers only, or to persons who shall improve the same, as they shall deem for the best interests of the state and the promotion of the settlement thereof; but no such sale shall be made, except at public sale, and as herein provided; provided, that no lands belonging to the state, within the areas to be irrigated from works constructed or controlled by the United States, shall hereafter be sold, except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States, and the regulations thereunder, concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued. After the withdrawal of

lands by the United States for any irrigation project, no application for the purchase of state lands, within the limits of such withdrawal, shall be accepted, except upon the conditions prescribed in this section; and, provided, that sales of state lands shall be made only to citizens of the United States, or to those who have declared their intention to become such, or to corporations organized under the laws of this state, provided that the State Board of Land Commissioners may sell to the United States, at the minimum price of ten dollars per acre, any state lands within the limits of a withdrawal of lands by the United States for reclamation purposes; or may exchange the same for other lands of the United States, upon such terms as it may deem for the best interests of the state; and, provided, that whenever the soil on any timber land is of such character that when cleared it would make good agricultural land, the land may be sold with the timber thereon as timber lands; and, provided, further, that all leases and conveyances of state lands by the State Board of Land Commissioners shall contain a reservation to the state of all coal, oil, and gas contained therein.

Sales for Irrigation.

Section 35. For the purpose of furnishing irrigation for state lands, the State Board of Land Commissioners, is hereby authorized when, in their judgment, the interests of the state would be subserved thereby, to sell, at public sale, at not less than the appraised value thereof, (which in no case, shall be less than the minimum price of ten dollars per acre,) any tract of arid land belonging to the state; provided, that no less than one-half of any section shall be sold, and only in alternate half sections, to any responsible person or persons, on condition that such person or persons construct an irrigation ditch in such locality, and to and upon said land, and of sufficient capacity to furnish water for the entire tract, and so located the said tract may be irrigated therefrom; provided, that, before any state lands shall be offered for sale under this section, the person desiring to purchase said land and construct said ditch, shall enter into a contract with the board guaranteeing to bid at least the minimum price per acre for said land, and to complete such ditch within the agreed time, which time shall be fixed by the board in contract. The contract shall further provide that such ditch shall furnish sufficient water for the remaining one-half of the state lands, at such reasonable rate as the board and the party constructing such ditch or canal may agree upon. Such contract shall be drawn by the Attorney General and signed by the Governor and register of state lands, and by the party desiring to construct said ditch; and, provided, further, that if any person, other than the person making application for the purchase of said lands, shall be the highest bidder at the public sale thereof, such bidder shall immediately enter into a bond or give the state other sufficient surety conditioned that he will within such reasonable time as the board may fix, enter into a contract and bond as required by the provisions of this act, for the construction of said ditch and for the furnishing of water therefrom; and in the event of his failure to furnish a satisfactory bond and enter into the said contract within the time fixed, then such bid shall be disregarded and said public sale shall be void and of no effect. The sale shall be made upon like conditions as other state lands are sold, and the board shall require a good and sufficient bond from the party desiring to construct such ditch, conditioned for the faithful performance of the contract and the conditions of the sale; and in no case shall the title of any of said lands pass from the state until the ditch shall have been completed and accepted by the board.

Location of Water Rights, etc., for State.

Section 36. It shall be the duty of the state land agent, under the direction of the State Board of Land Commissioners, wherever it may be deemed desirable, to locate water rights for the irrigation of any state lands in the vicinity, and also, to locate reservoir sites, wherever the same may be desirable, for irrigation purposes, in connection with state lands.

Sale or Lease of Lands.

Section 37. All sales and leasings of state lands shall be conducted by the register of state lands. Each quarter section, or such portion thereof as belongs to the state, shall be offered for sale separately; smaller lots only may be sold when it is impossible to sell as above described, or when thereby a larger price may be obtained, but not more than one hundred and sixty acres of agricultural land susceptible of irrigation, and not more than three hundred and twenty acres of agricultural land not susceptible of irrigation, and not more than six hundred and forty acres of grazing land or lands which, by reason of altitude are valuable only as hay land, shall be sold to one person, or company or corporation; and no land shall be sold for less than the minimum price of ten dollars per acre, nor for less than its appraised value, and the amount of the purchase money to be paid at the time of the sale shall not be less than fifteen per cent of the whole purchase price.

Public Auction.

Section 38. All sales of state lands shall be at public auction only. The State Board of Land Commissioners shall hold a public sale of state lands at the county seat in each county in the state at least once every two years, and may hold other public sales of such lands in any county of the state at any time they may deem it necessary, at which sales any and all of the state lands subject to sale situated in said county, may be offered for sale and sold. All sales shall be held at the courthouse in the county in which the same is held.

Advertisement of Sale.

Section 39. All sales under this act, shall be advertised once in each week for four consecutive weeks, in some paper printed and published in the county in which such land is situated, if there be such paper, if not, then in some paper published in an adjoining county. The advertisement shall state the time, place and terms of sale, and a description of the state lands in the county to be offered.

Confirmation of Sales.

Section 40. All sales of state lands and all sales of timber on state lands, shall be subject to the approval and confirmation by the State Board of Land Commissioners, and no sale shall be deemed completed until after such approval and confirmation.

Default in Payment of Purchase Price.

Section 41. Whenever any purchaser of state lands, or his assigns, shall default, for a period of thirty days, in any of the payments of either principal or interest due upon the certificate of purchase issued to him, or his assignor, said certificate may be forfeited and the lands reverted to the state of Montana, upon a notice to that effect mailed to the last known address of said purchaser, or his assigns, which notice shall allow him thirty days additional within which to make such payment. Provided, that like notice shall be mailed to the bondsmen, if any, of such person or assigns,

who, in case of the final default of said purchaser, shall be entitled to redeem said land at any time within thirty days after such final default. If payment be not made as is in this section provided the State Board of Land Commissioners may sell the said lands, or any part thereof, and all payments made by the previous purchaser shall be forfeited to the state.

Purchase Price, How Paid.

Section 42. State lands shall be paid for as follows: Fifteen per cent of the purchase price in cash on the day of the sale, and the balance in twenty equal annual payments, drawing interest at the rate of five per cent per annum, payable annually; but a purchaser may make payment of one or more annual installments at any time by paying the principal, together with accrued interest, if paid on the date when one of the annual payments is due, if not, then to the date of the next annual payment.

Certificate of Purchase.

Section 43. Whenever any purchaser of the state lands has paid fifteen per cent of the purchase price of the land bought, and delivered to the register of state lands the bond herein required to be given, the register shall make out a certificate of purchase and deliver the same to the purchaser, which certificate shall contain a description of the land purchased, the sum paid, the amount remaining due, the date at which each of the deferred payments falls due, and the amount of each, and shall be signed by the Governor, as the president of the State Board of Land Commissioners, and by the register, and a record of the same shall be kept in a suitable book.

The registrar of lands, notwithstanding a sale by him, may refuse to issue the certificate, on the ground of inadvertence and mistake; if the lands were, in fact, not

subject to sale, since other persons had acquired a prior interest in them.—State ex rel. Danaher v. Ray, 47 Mont. 571, 133 Pac. 961.

State Land Agent to Examine.

Section 44. When an application to purchase any state lands shall be filed in the office of the register, the State Board of Land Commissioners may refer the same to the state land agent, who shall visit the land proposed to be purchased and shall report in writing to the State Board of Land Commissioners, giving the value of said land and the value of all improvements which may have been placed thereon, together with any other facts which may have a bearing in determining the value thereof. If any of the improvements consist of cultivation done thereon by a prior lessee, and the land shall be purchased by any other person than such lessee, seventy-five per cent of the value of such cultivation shall be paid to the person making the same, and the other improvements shall be disposed of as herein otherwise provided.

When Purchaser Entitled to Patent.

Section 45. Whenever a purchaser of state lands, or his assigns, shall have paid one-half of the amount of money payable to the state of Montana upon his certificate of purchase, he shall be entitled to have his bond, given to secure such payment, canceled; unless the State Board of Land Commissioners shall order that the same continue in force for a longer period; and when he shall have paid the whole of the said purchase money, he shall be entitled to letters patent for the land sold to him as his assignor.

Patents, How Executed.

Section 46. The Governor, and in case of his absence or inability, the Lieutenant-governor, shall be, and is hereby authorized to execute deeds

or patents of conveyance, transferring, without covenants, any and all lands sold by the State Board of Land Commissioners under the laws of this state. Such deed or patent shall be attested by the Secretary of State, countersigned by the register, and have the great seal of the state and the seal of the State Board of Land Commissioners thereto attached, but need not be acknowledged. A certified copy of the record of any such deed or patent shall be receivable in evidence in all courts of record of this state, the same as the original.

Limitation for Cancellation of Patent.

Section 47. No action shall be brought to vacate or cancel any patent issued by the state, after the expiration of two years from the date of such patent, except upon the ground of fraud.

Certificates may be Assigned.

Section 48. Certificates of purchase shall be assigned, but all such assignments shall be in writing, and be acknowledged as other conveyances of real estate, and shall be filed for record in the office of the registrar of state lands; provided, however, that the State Board of Land Commissioners may cancel any certificate of purchase, upon the ground of fraud within three years from the date of its issue, upon giving to the person named in the certificate of purchase, at his last known place of address, thirty days' notice that the same is held for cancellation; and, if the same is registered, hearing shall be had before the board of contest, as in other contested cases provided, provided that such hearing may be had upon testimony taken before some officer authorized to administer oaths in the county in which the land involved is situated.

Lost Certificate of Purchase.

Section 49. Whenever any certificate of purchase shall be lost, or wrongfully withheld by any person from the owner thereof, the contest board may receive evidence of such loss, or wrongful withholding, and report their findings, as in other contested cases; and the State Board of Land Commissioners, may, in proper cases, cause a new certificate of purchase, or a patent, as the case may be, to issue to such person as shall appear to them to be entitled thereto.

Lands Subject to Taxation.

Section 50. All lands sold under the provisions of this act, or any interest therein, shall be subject to taxation; and the register of state lands shall furnish to the county assessors of each county, on or before the fifteenth day of March of each year, a list of all lands sold during the year ending of the first Monday of March, to whom sold, the purchase price, and the amount actually paid. Provided, that no purchaser of state lands shall be taxed for a greater percentage of the value of the land than the ratio which the amount actually paid on the purchase price bears to the total purchase price. And provided further, that in case of a sale for taxes, the interest only of said purchaser shall be sold.

Interest of Purchaser Subject to Lien.

Section 51. That the interest of any purchaser of state lands in the land so purchased, shall be subject to the same liens as other real estate; provided, that in case of sale, only the interest of the purchaser shall be sold. In case of any sale under the provisions of this section, or of a sale for taxes, the person purchasing under such provisions, shall be substituted

for the judgment debtor and a new certificate of purchase shall be issued to him upon satisfactory proof to the State Board of Land Commissioners that he is entitled thereto.

If Lands Revert.

Section 52. In case any lands sold under the provisions of this act shall revert to the state, for any cause whatsoever, the register of state lands shall at once notify the assessor and the county treasurer of the county in which the land is situated, and upon the receipt of such notice it shall be the duty of the assessor to cancel any assessment of said land for that year, and of the county treasurer to rebate all taxes that have been charged against said land for that year; provided that the state shall pay to the county in which said land is situated, its proportion of any taxes that may have been levied upon said land for a year in which the state has collected an installment of purchase money upon said land, said payment to be made out of such installment.

Sale of Timber.

Section 53. The State Board of Land Commissioners shall have power to sell timber on state lands at such price per thousand feet as in its judgment shall be for the best interest of the state, but not otherwise; but no such sale of live timber shall be made at a less price than three dollars per thousand feet. But no live timber less eight inches in diameter, twenty feet from the ground, shall be sold or permitted to be cut. All timber sold or cut from state lands shall be cut and removed, under such rules and regulations for the preservation of standing timber, and the prevention of fires, as the State Board of Land Commissioners shall prescribe; in all cases the board must require the person cutting the timber to pile the brush and slashings and dispose of the same in such manner as to prevent forest fires. Before any permit shall be granted, the timber shall be estimated and appraised under the direction of the state forester, upon the request, and subject to the approval of the State Board of Land Commissioners, which estimates and appraisal shall show as nearly as may be the amount and value per thousand feet of all timber measuring not less than eight inches in diameter, twenty feet from the ground, and also all other timber measuring below this standard on each tract or lot, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream, or railroad, and its value and position as a protection to a watershed. [Amendment approved March 7, 1911; Laws 1911, c. 118, p. 254.]

Permits for Cutting Timber.

Section 54. No permit for cutting live timber shall be granted except to the highest bidder at a public sale held at the state capitol, notice of which sale shall be published as provided by law, for the sale of state lands, but no sale shall be made at a less price than the appraised value of the timber as fixed by the State Board of Land Commissioners; and no timber shall be sold after the passage of this act until the same has been reappraised and estimated since March 19, 1909. Every person purchasing timber at such sale before the execution of the permit to cut the same shall execute a bond to the state of Montana, in double the amount of the estimated value of the timber permitted to be cut, with sufficient sureties, to be approved by the board, conditioned upon the payment to the State Treasurer of the amount that may be found due under the terms

of such permit, and according to the provisions of law, and further conditioned upon the cutting of such timber in compliance with such rules and regulations as may be prescribed by the State Board of Land Commissioners. [Amendment approved March 7, 1911; Laws 1911, c. 118, p. 254.]

Permits.

Section 55. All permits to cut live timber under the provisions of this act, shall be made according to a form prescribed by the Attorney General, and shall be signed by the party applying for the same and by the president and secretary of the State Board of Land Commissioners.

Said permits shall contain a description of the land to be cut upon, the estimated amount of timber upon the same, the amount of large timber required to be left standing, the time which said timber shall be removed, the price per thousand feet, or the entire value of the timber, if the right to clear the land has been sold, for which the same was bid in, the stipulated log-mark, and such other terms and conditions as may be necessary to make all logs cut under its provisions the absolute property of the state, until the same are paid for. Such permits, when properly executed, shall be recorded in the office of the register of the State Board of Land Commissioners, and the log-mark described therein shall vest the ownership of all logs bearing the same in the state. Provided, however, that the State Board of Land Commissioners may authorize the state forester to issue permits without notice to citizens of Montana to cut and take away dead standing timber under such rules and regulations as to price and quality as may be prescribed by the board, and provided further that the state forester shall issue permits without notice to citizens of Montana to cut and take away down timber, without price, under such rules and regulations as may be prescribed by the board. [Amendment approved March 7, 1911; Laws 1911, c. 118, p. 254.]

Log-mark.

Section 56. The state forester shall select and designate a log-mark for each person granted a permit to cut logs upon state lands, which log-mark, when so selected and designated, shall be filed in the office of the register of state lands, and shall be distinctly different from any other log-mark selected and designated by him. The state forester shall cause all logs so cut to be scaled, and make a detailed report of the same, to the State Board of Land Commissioners on or before the first day of every month, showing the name of the party cutting, the description of the land cut upon, the number of logs cut and marked, the mark placed thereon, the total number of feet, and the value thereof per thousand, as shown by the records of this office, stating whether such cutting has been according to the terms of the permit, and, if not properly cut, the consequent damage to the state; and such timber, or logs, shall not be sold transferred or manufactured into lumber until the amount due the state, according to the report of said forester, shall have been paid in full; and it shall be the duty of the state forester to report to the State Board of Land Commissioners all trespass which has been, or which hereafter be made upon the state timber lands, and all logs cut by trespassers shall be disposed of as hereinafter provided. [Amendment approved March 7, 1911; Laws 1911, c. 118, p. 254.]

Payment for Timber.

Section 57. Upon receipt of such report from the state forester, the register of state lands shall draw a draft for the amount upon the party from whom the stumpage is due. If said party shall immediately make payment of the required amount, the register shall execute a release of the logs, and transfer of the mark thereon; but in no case shall such release or transfer be made until the lien of the state has been fully satisfied. If such purchaser shall not pay the amount of such draft within ten days after receipt of same, it shall be the duty of the State Board of Land Commissioners to take possession of the logs in question, and sell the same at public auction to satisfy the claim of the state, paying the overplus, if any, after defraying the cost and expenses of such sale to the party entitled thereto, provided, that if the proceeds of such sale are insufficient to pay the amount due upon the purchase price, together with the costs and expenses of the sale the amount of such deficiency shall be certified to the Attorney General by the State Board of Land Commissioners and he shall immediately proceed to collect such deficiency from the purchaser or his bondsman; and, provided, that in lieu of taking possession of the logs upon which stumpage is due, the State Board of Land Commissioners may turn the account over to the Attorney General, who shall immediately proceed to collect the same upon the bond hereinbefore provided for; but in no case shall the logs be released until the account is paid. The proceedings upon the bond shall not prevent the State Board of Land Commissioners from seizing the logs at any time before the claim of the state is satisfied. [Amendment approved March 7, 1911; Laws 1911, c. 118, p. 254.]

Penalty for False Marks on Timber.

Section 58. If any person, or any officer or employee of a corporation, having a contract to cut timber under the provisions of this act, with intent to defraud the state, place any other log-mark upon logs cut by him or if, under such contract than the one mentioned therein he shall be deemed guilty of felony, and when upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the state prison for not less than one year, nor more than three years, or both; and all logs upon which such false mark has been placed shall be forfeited to the state.

Additional Penalty.

Section 59. That in addition to the penalties provided for in this title against those committing trespass upon any of the lands owned or held in trust or otherwise by the state, the State Board of Land Commissioners is hereby authorized and empowered, without legal process, to seize and take, or cause to be seized and taken, any and all lumber, wood, grass or other property, unlawfully severed from the said lands, whether the same has been removed from said lands or not, and may dispose of the same at either public or private sale, in such manner as will be most conducive to the interests of the state, and all moneys arising therefrom, after deducting the reasonable and necessary expenses of such seizure and sale, shall be a part of the permanent fund to which such lands may belong.

Board to Defend Suits.

Section 60. That for the purpose of determining the title to any property seized and taken under the provisions of this act, the State Board of Land Commissioners is hereby authorized and empowered to defend, in

the name of the state, any and all actions that may be brought for that purpose, and to do and perform all things necessary to protect the interests of the state.

State Log-mark.

Section 61. The state forester, under the direction of the State Board of Land Commissioners, shall select and designate a brand, which shall place, or cause to be placed, upon all timber, logs, boards or planks, that may be seized, as provided for in this act. Any person, or persons, or any officer or employee of any company, association, or corporation, who shall remove, sell or dispose of any property mentioned in this act, after the same has been seized or marked with the state brand, or who shall erase, deface, cut, or destroy and mark upon any such property, shall, upon conviction, be imprisoned in the state prison for a term of not less than one year, nor more than three years, and be subject to a fine of not less than five hundred (\$500) dollars nor more than five thousand (\$5,000) dollars. [Amendment approved March 7, 1911; Laws 1911, c. 118, p. 254.]

Board may Lease.

Section 62. The State Board of Land Commissioners may lease any portion of the land of the state at a rental to be determined after the examination of the land by an appraiser, except as herein provided. The lessee shall pay the annual rental in advance to the register of state lands, who shall receipt for the same. If stone, coal, coal-oil, gas or other mineral not mentioned herein, be found upon the state land, such land must be leased only for the purpose of obtaining therefrom the stone, coal, coal oil, gas or other mineral, for such length of time, and conditioned upon the payment to the register of such royalty upon the product, as the State Board of Land Commissioners may determine.

Lands, How Leased.

Section 63. At every public sale of state lands, each tract of land, except timber lands, for which no bid for its purchase has been received, shall be immediately offered for lease to the highest bidder, as follows: By quarter sections, or so much thereof as belongs to the state, in the case of lands classified as agricultural (a); by half sections, in the case of lands classified as agriculture (b); and by sections in the case of lands classified as grazing; and smaller tracts shall not be leased, unless it is deemed impossible to lease as above described, or unless a larger price may be obtained thereby; and no land shall be leased for a longer period than five years, nor for a less rental than the minimum rental fixed by the board, which shall not be less than five per centum per annum of the appraised value of such lands.

Bond and First Payment of Rental.

Section 64. Each lessee within twenty-four hours after leasing any land, pay to the register the first year's rental, and shall deliver to him a good and sufficient bond, executed by the said lessee and two sureties, and approved by the treasurer of the county in which the land is situated; the condition of such bond being that such lessee will keep and perform all the covenants and agreements contained in the lease; and the register shall, upon such payment, and the delivery of such bond, execute and deliver to such lessee, a lease of such lands, and shall enter the same in a suitable book to be kept for that purpose.

Penalty for Failure to Make First Payment.

Section 65. If any successful bidder at a public leasing or public sale refuses or neglects to make payment, or deliver his bond as herein provided, he shall forfeit to the state the sum of one hundred dollars, with costs; and the Attorney General shall institute a suit for the recovery thereof in the name of the state of Montana.

Leases Conditioned on Payment of Rental in Advance.

Section 66. All leases of state or school land shall be conditioned upon the payment of rent annually in advance, and the violation of this condition shall work a forfeiture of the lease at the option of the State Board of Land Commissioners, after thirty days' notice to the lessee, such notice being sent to his last known postoffice address, as given by himself to the register of the state board, and to the sureties upon his bond; provided, that after the expiration of the said thirty days' notice, the sureties upon the bond of the lessee, or any creditor of the lessee, may pay the said rental and take an assignment of said lease, or have such rights transferred to them or him as the case may be provided that such sureties shall have the preference.

Term of Lease.

Section 67. No state land shall be leased to any person for a longer period than five years. Lots within an incorporated town or city, may be leased for a period of five years, with covenants for the renewal of said lease to the lessee, or his assigns, for nine more rental periods of five years each, making a total of not to exceed fifty years, at such rental as may be fixed at the beginning of each five year term.

Renewal of Lease, How Made.

Section 68. When any lease expires by limitation, the holder thereof may renew the same as follows: at any time within thirty days before the date of such expiration, the lessee or his assigns, shall notify the register of his desire to renew said lease; if the lessee and the register agree as to the valuation of the land, a new lease may be issued, bearing even date with the expiration of the old lease, and upon like conditions; provided, however, that the former valuation shall not be decreased without the consent of the State Board of Land Commissioners; and, provided, further, that the state board may, in its discretion, offer said land for sale at any of the regular public sales of state lands held in the county where the land is situated, upon the same terms, and in the same manner as though said lease had not been executed.

Improvement on Leased Land.

Section 69. Should any person apply to lease any of the lands belonging to the state, upon which there are improvements placed there by a former lessee, before a lease shall issue, said applicant shall file in the office of the register, a receipt showing that the price of said improvements, as agreed upon by the parties, or fixed by the state land agent, or one of his assistants, has been paid to the owner thereof in full, or shall make satisfactory proof that he has tendered to such owner the price of such improvements so agreed upon or fixed; or proof that the owner of said improvements elects to remove them.

Rental of Coal Lands.

Section 70. Any person, association, copartnership or corporation, leasing and operating coal lands under the provisions of this act, shall pay to the state the minimum price of not less than ten (10) cents per ton, for each and every ton of merchantable coal so mined from said land, to be paid monthly on or before the twenty-fifth day of each month, for the coal mined during the preceding calendar month. Should the lessee of such coal lands fail to mine during any one year the minimum amount that may be provided for in the term of the lease, he shall, notwithstanding such failure, pay to the state the minimum rental provided for in said lease. Should any person apply to lease any of the coal lands belonging to the state, upon which there are surface or underground improvements placed or made by a former lessee, before a lease shall issue, said applicant shall file in the office of the register a receipt showing that the price of said improvements, as agreed upon by the parties, or fixed by the state land agent, or one of his assistants, has been paid to the owner thereof in full, or shall make satisfactory proof that he has tendered to such owner the price of such surface or underground improvements so agreed upon or fixed; or proof that the owner of such improvements elects to remove them.

Location of Mining Claims on State Lands.

Section 71. Locations of mining claims not exceeding six hundred (600) feet in width and fifteen hundred (1500) feet in length, each, may be made upon lands belonging to the state as follows: The discoverer of a body of mineral in either a vein, lode, or ledge, or mineral in a placer deposit shall immediately post conspicuously a notice that he has made such a discovery, on the date stated in such notice, and shall complete such location in all respects as prescribed by the laws of this state for the location of mining claims upon the public lands of the United States, except that no notice of such location need be recorded in the office of the county clerk, but such notice shall be filed with the register of state lands. Such procedure shall empower the locator to retain possession of and operate said claim for the period of one year, at the end of which time, he shall be required to purchase said claim at ten dollars per acre or take a lease thereof at such price, or upon such terms as may be agreed upon between him and the State Board of Land Commissioners.

Proof of Mineral Character of Land.

Section 72. Before the locator will be allowed to purchase the claim located by him, satisfactory proof at a hearing, if deemed necessary, must be submitted to the State Board of Land Commissioners, that such claim is more valuable for mineral purposes than for any other purpose, and that the same contains a body of mineral in place, or a placer deposit, of sufficient value to justify the operation of the same as a present fact; provided, that no mining claim shall be located upon any coal or oil lands; and, provided, further, that all hearings under the provisions of this section shall be had before the contest board with like procedure as other contested cases; and provided, further, that no lands classified under subdivision 4 of the classification in the Constitution shall be sold as mineral lands, but the mineral therein may be sold separately from the surface.

Lands Valuable for Stone.

Section 73. Whenever it shall appear to the State Board of Land Commissioners that there is a deposit of stone valuable for building, mining, or other commercial purposes upon any section or subdivision of state land, the board shall not lease the same for any purpose except the extraction and working of the stone and then upon a royalty basis only, upon such terms as the board shall prescribe. The board may lease the remainder of the section or subdivision for agriculture, grazing, or other purposes, as may appear for the best interests of the state, as other state lands are leased; but shall provide in all such cases for a right of way across said state land or any adjoining state land for all purposes connected with the working and disposition of the stone.

Leases and Receipts.

Section 74. All leases shall be in duplicate, both to be signed by the lessee and by the register of state lands, with the seal of the board affixed thereto, one copy to be delivered to the lessee and the other to be retained in the state land office.

Register Receipts.

Section 75. The register shall issue receipts in triplicate for all moneys received by him from any source, of which one copy shall be delivered to the person making the payment, one copy to be delivered to the State Auditor, and the other copy to be retained in the state land office. All receipts issued shall be numbered consecutively.

Leasehold Subject to Execution.

Section 76. The leasehold interest of any lessee shall be subject to levy and sale under attachment and execution as other property.

Record of Leases and Certificates.

Section 77. The register shall keep a full and complete record of all lessees and certificates of purchase issued by him, and of all payments made thereon, and shall on or before the twentieth day of every month notify all persons having amounts becoming due during the following month, of such amounts. He shall also notify, at such time, all persons who may be delinquent for thirty days or more, of such delinquencies. In case any lessee becomes delinquent for more than sixty days after notice, the register shall forthwith, unless an extension has been granted, declare a forfeiture of the lease, and may eject the lessee from the land; but such forfeiture and ejectment shall in no way release the bond heretofore provided for, but the sureties thereon, upon the forfeiture of such lease, and upon the payment by them of the amount due, if paid without suit, may have the lease transferred to them, or either of them by consent of the other, for their own use and benefit, and be substituted [subjected] to all the rights of the lessee. In case of a disagreement between the sureties the land shall be divided between them by the state land agent.

Lands not Sold may be Leased.

Section 78. Whenever any state lands have been exposed for sale and lease at public sale, any lots or tracts remaining unsold or unleased, may be leased to any person thereafter making application therefor subject to the same terms and conditions as though the applicants were the successful bidder at a public sale.

Purchase of Water Right by Lessee.

Section 79. At any time during the existence of a lease, the lessee, with the consent of the Board of Land Commissioners first obtained, may, by written application showing the cost and benefits to be derived therefrom, purchase or acquire a water right, in order to irrigate the land leased by him, and if such water right shall become a valuable and permanent improvement, then, in case of the sale or lease of the said lands to other parties, the old lessee shall be entitled to receive the value thereof, as in the case of other improvements which he may have placed upon said lands.

Removal of Improvements.

Section 80. All lessees having improvements on state lands, and who do not wish to re-lease the same, may dispose of or remove such improvements as are capable of removal without damage to the land, at any time within ninety days from the expiration of such lease, after which period all such improvements that have not been removed shall become the property of the state, unless such period be extended by the register for good cause shown.

Improvements of Prior Lessee.

Section 81. When any person has heretofore, or shall hereafter settle upon or improve any of the lands of the state, held by him under lease from the state, and a sale of such lands is made by the state, subsequent to such settlement or improvement, and the lessee shall not become the purchaser, the person becoming the purchaser of such lands shall pay to such lessee the reasonable value of the improvement thereon. Whenever the parties cannot agree as to the reasonable value of such improvements, the value thereof shall be decided by the state land agent, or one of his assistants, but nothing herein contained shall be construed to interfere with the right of the purchaser of any such lands to the immediate possession thereof, upon the issuance to him of the certificate of purchase; provided, such original lessee may elect to remove said improvements, as herein provided.

Who may not Buy or Lease State Lands.

Section 82. It shall be unlawful for any member of the State Board of Land Commissioners, or any person or persons appraising lands, or in the employ of the state for the selection, classification, appraisal, sale or leasing of any state lands, or the timber thereon, or of any person connected with the state land office as an officer or employee, to purchase or lease, directly or indirectly, any of the lands of the state, or any timber thereon.

Cancel Fraudulent Lease.

Section 83. If through any fraud, deceit, or misrepresentation, any person or persons, corporation or company, shall procure the issuing of any lease for state lands, the State Board of Land Commissioners shall have authority to cancel the same, after thirty days notice to the lessee, which notice shall state the grounds of the charge, after which a hearing may be had before the contest board, as in other contested cases.

Disposition of Rentals.

Section 84. All moneys arising from the leasing of state lands, shall be held for the benefit of the respective funds, known as Income Funds,

for which said lands were granted, and may be used for any of the purposes contemplated in this act.

Money Paid by Mistake Refunded.

Section 85. If by any mistake or error, any money has been, or shall hereafter be, paid on account of any sale or lease of state lands, it shall be the duty of the State Board of Land Commissioners to draw a voucher in favor of the party paying said money, and on presentation of said voucher, the auditor shall draw his warrant upon the amount, and the treasurer shall pay the same out of the funds into which such money was deposited or placed.

Moneys from Sales Go into Permanent Funds.

Section 86. All moneys arising from the sale of any state lands shall be held intact for the benefit of the funds for which such lands were granted, and shall be permanent funds, the interest of which only shall be expended for the purposes for which the said lands were granted.

Investment of Money in Permanent Funds.

Section 87. All moneys derived from the sale of state lands and belonging to the Permanent Land Grant Funds, shall be invested as follows:

1. In bonds of the state of Montana, or of the United States.
2. In interest-bearing warrants upon the general fund of the state.
3. In bonds of the several counties and cities of the state.
4. In bonds of school districts within the state of Montana.

Provided that before any moneys are so invested, the Attorney General shall furnish the board an opinion as to the legality of the bond, and the board must be satisfied that such bonds are in all respects legal and a safe investment.

Purchase of Bonds.

Section 88. Whenever the State Board of Land Commissioners has purchased any bonds, as provided herein, and the same are duly executed and delivered to the president of the State Board of Land Commissioners the board shall deliver the same to the State Treasurer, and shall direct the State Auditor to draw his warrant upon the State Treasurer for the amount thereof, specifying the fund upon which, and the person in whose favor, the said warrant shall be drawn, whereupon the State Auditor shall draw a warrant upon the State Treasurer accordingly, which warrant shall be delivered to the person in whose favor the same is drawn and shall be paid by the State Treasurer.

Treasurer Purchases Warrants.

Section 89. The State Treasurer shall purchase interest-bearing warrants issued against the general fund of the state, whenever ordered so to do by the State Board of Land Commissioners; and the State Treasurer is hereby required to render a statement to the State Board of Land Commissioners of the amount of interest-bearing warrants in each fund, at any time said board may request such information.

State Shall have Notice of All Bond Issues.

Section 90. It shall be mandatory upon the officers in charge of any county, city or school district bond sales, to transmit to the State Board of Land Commissioners, at least thirty days prior to the date of any such sale, a copy of the notice thereof, also a full and complete brief of the pro-

ceedings had with reference to the issuance of said bonds, with the opinion of the county attorney as to the legality thereof, together with a certificate showing the amount of taxable property in, and the amount of indebtedness against, such county, city or school district and, upon request, shall furnish such other information as the state board may require; and any failure to comply herewith shall be deemed a misdemeanor, punishable by a fine of not less than one hundred (100) dollars, nor more than one thousand (1000) dollars; and the Attorney General, upon the request of the State Board of Land Commissioners, must prosecute any officer for violating this section.

Redemption of Bonds Before Maturity.

Section 91. The State Board of Land Commissioners shall permit any county school district, city or town to redeem one or more of its bonds, at the expiration of any interest period, before the maturity of such bonds, upon giving to the State Board of Land Commissioners thirty days' notice of its intention to redeem and pay such bonds, and upon payment thereof as herein provided, such bonds shall be delivered to such county, school district, city or town for cancellation.

Payment of Interest.

Section 92. The interest on all land grant warrants shall be payable on the first day of July next succeeding the date of issue, and annually thereafter. Whenever there is sufficient money in any of the land grant funds to pay outstanding warrants, or interest thereon, the treasurer shall cause to be published a brief notice that said warrants, or the interest on particular warrants on which interest would be payable on July 1st, describing them by numbers and names of fund, will be forthwith payable; and on the presentation of any such warrants, on, or at any time after July 1st, the treasurer shall pay the interest thereon, indorsing the date of payment and amount paid of each warrant, returning, the same to the holder; and he shall keep a register showing the dates and amounts of each interest payment on each warrant, in each fund; and if any warrants are called for payment, interest thereon shall cease on the date fixed in said notice.

Expenses, How Paid.

Section 93. The expenses of collecting, platting, leasing and selling of all state lands and all expenses connected with the preservation or sale of timber thereon, shall be paid by the treasurer, on warrants issued by the auditor, on vouchers certified by the State Board of Examiners, that the said expenses were necessary and actually incurred in the selection, location, appraising, classifying, platting, leasing or selling of state lands, or in the preservation or sale of timber thereon, and shall be paid out of the money in the several income funds, and the State Board of Examiners, in approving the same, shall designate the particular fund out of which said expense shall be paid; provided, that no money shall be expended for the benefit of any lands other than those in the land grant from which the particular income fund has been derived.

Penalty for False Appraisements.

Section 94. Every person appointed or selected to appraise any of the state lands, or the timber thereon who willfully and knowingly makes a false return of any survey or any classification or appraisal of the value of the land, or of the timber thereon, at variance from the true classification

or value thereof, or without having personally examined and surveyed the same, is punishable as provided in section 8234 (240) of the Penal Code.

Timber not to be Cut.

Section 95. If any purchaser of state land, before receiving his title therefor, cuts or destroys any timber on said land, more than shall be necessary in the building and repairing of fences and houses and other necessary buildings thereon, and for fuel for the family of the occupant, he shall be liable in damages for all such excess, the amount of such damage to be recovered in an action in the name of the state, to be instituted by the Attorney General, in the county in which the land is situated.

Bonds.

Section 96. The State Board of Land Commissioners may require any clerk or employee in the state land office to give bond in such sum as may be deemed advisable. All bonds required under the provisions of this act may be surety company bonds. The cost of all bonds required of any officer, clerk or employee under the provisions of this act, shall be paid out of the income funds provided for in this act.

Definition.

Section 97. The words "state lands" and "public lands of the state," mean all lands granted to the state by the United States for the support of common schools, including sections 16 and 36, and other lands granted in lieu thereof, and all lands granted for educational and reformation institutions, and for public buildings at the seat of government of the state, and such other lands as may belong to, or be hereafter granted to, the state by the United States, or by any person, and all lands of which the state may become the owner by operation of law.

Records Public.

Section 98. All documents and records in the state land office shall be subject to inspection by any person, in the presence of the register, or his deputy; and certified copies thereof signed by the register, with the seal of the Board of Land Commissioners attached, shall be deemed presumptive evidences of the facts to which they relate, and on request they shall be furnishable by the register.

Money, Where Payable.

Section 99. All moneys due the state under any of the provisions of this act, shall be due and payable at the office of the register of state lands, at the state capitol, in the city of Helena.

Suits, Where Triable.

Section 100. All actions for the recovery of money due under this act, or for the cancellation of leases, or for the cancellation of certificates of purchase or patents, or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands, shall be controlled, as to venue, by the provisions of the Code of Civil Procedure relating to the place of trial of civil actions; and shall be conducted by the Attorney General.

Board may Select Lands.

Section 101. The State Board of Land Commissioners is hereby empowered to accept, in the name of the state of Montana, by gift or by operation of law, any lands of whatsoever nature; and said lands shall be

appraised, managed, leased, or sold in the same manner as is prescribed herein for lands granted by the United States; and the proceeds of the leases and sales of all such lands shall be applied to such specific purpose or purposes as may be designated by the grantor or testator, or by the laws under which the same are acquired by the state.

To Correct Errors.

Section 102. That the State Board of Land Commissioners is hereby authorized, empowered and directed to correct, and cause to be corrected, any and all errors, mistakes and misdescriptions in any and all deeds and conveyances of property to the state of Montana; and in order to carry into effect the provisions hereof, all deed or such other conveyances as may be necessary, shall be made and executed in the manner provided for the execution of patents by the state. And said board has power to correct any error made in the sale or leasing of state lands by the board, or any officer acting under its control upon satisfactory proof, by hearing before the contest board, if necessary that an error or mistake has been made and should be corrected.

Holding Over and Trespass.

Section 103. All corporations, companies, or persons who shall use or occupy state lands for more than thirty days after the cancellation or expiration of a lease, except by authority of the board; and any corporation, company, or person who shall construct a reservoir, ditch, railroad, public highway, private road, telegraph, or telephone line or in any manner occupy or enter upon lands belonging to the state, without first having secured the authority and permission of the State Board of Land Commissioners to so occupy said land, for such purposes, shall be regarded as a trespasser and upon conviction thereof, shall be fined in the sum of not less than twenty-five (25) dollars, and not more than one hundred (100) dollars, for each offense, and each day shall constitute a separate offense, and in addition to the foregoing penalty, the state shall be allowed to collect as rental for the use of said lands, a sum equal to the appraised value thereof for rental purposes, as fixed by an appraiser from the State Board of Land Commissioners, and which value shall not be less than ten cents per acre per annum.

Moneys from Penalties.

Section 104. All moneys received as fines, fees, or forfeiture under this act, or as penalties for violations of the provisions of this act, and not otherwise provided for, shall be paid to the State Treasurer and by him credited to the land office expense fund.

County Commissioners may Protect Forests.

Section 105. The Board of County Commissioners of any county may provide money for the purposes of forest protection, improvement and management.

Penalty.

Section 106. Any officer or employee of the state of Montana guilty of a violation of any of the provisions of this act and not herein otherwise provided for is hereby declared guilty of a felony, and shall be punished by imprisonment in the state prison for a term not exceeding ten years, or by a fine not exceeding five thousand dollars, or both fine and imprisonment.

Repealing.

Section 107. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

When in Force.

Section 108. This act shall be in full force and effect from and after its passage and approval.

Approved March 19, 1909.

TAX ON MIGRATORY LIVESTOCK.

Chapter 125, Laws 1909, page 176.

An act to provide for the assessment of livestock, creating a Migratory Stock Fund, and providing for the collection and distribution of taxes thereon.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. All livestock kept, fed, pastured, ranged, or grazed, or which does range or graze in more than one county of the state during any year, shall be assessed for taxation in the county in which it is found at the time fixed by law for the assessment of all property in the state, and such county in which such livestock is so assessed, or liable to be assessed shall be known as the home county, and at the time of the assessment of a herd or band of livestock, the owner thereof, or his agent, shall make and deliver to the assessor a written statement, under oath, showing the proper description and different kinds of such livestock within the county, belonging to him or under his charge, with their marks and brands, and showing the full time during the current year that such livestock, and every part, portion and kind thereof, has been, and will be within the county, and such livestock and the owner thereof shall be liable to the said county for the taxes thereon, as other property is liable. [Approved March 8, 1909; Laws 1909, c. 125, p. 176.]

Section 2. Whenever such livestock is removed, kept, fed or pastured, or permitted to range or graze, or does range or graze in any county other than its home county, the owner thereof or the person in charge, or his agent, shall, within fifteen days from the time any such stock enters such other county, deliver to the assessor of such county, and to the assessor of the home county, a written statement, under oath, similar in all respects, as far as practicable to the statement required at the time of the assessment.

Section 3. Each county of the state in which livestock is kept, fed, or pastured, or in which it is permitted to range or graze, or does range or graze, is entitled to receive the taxes on said property, in proportion to the time that the same is in such county, and the county to which said livestock is so removed shall be entitled to receive and recover from the home county the taxes collected on said stock, in proportion to the time for the current year such stock is so kept, fed, or pastured, or does range or graze in the county other than where said livestock is assessed.

Section 4. The assessor shall indicate on the assessment-roll livestock which has, or will be kept, fed, pastured, ranged or grazed in more than one county, and the treasurer, on collecting the taxes thereon in the county in which the same is assessed, shall remit the portion levied for state purposes, as in case of other taxes levied by the state of Montana, and he shall place

the remainder of the tax in a separate fund, known as the migratory stock fund, which shall be subject to distribution as hereinafter provided.

Section 5. At the regular meeting in March of the Board of County Commissioners, the assessor of such county shall transmit to the board all information filed with him or in his possession, concerning stock assessed, wherein the taxes are to be apportioned between two or more counties, and the Board of County Commissioners shall proceed, on receipt of such information, to distribute said migratory stock fund, in proportion to the time said stock has been in each of such counties, as above provided, and order warrants drawn in favor of the counties entitled to receive a portion of the said taxes against such migratory stock fund, and the portion remaining, belonging to the home county, shall be distributed on the order of the Board of County Commissioners to the proper fund, according to the tax levy made during the year such assessment was levied, and the board shall make a like distribution of all moneys received from other counties, under the provisions of this act.

Section 6. No county, by reason of the removal of stock from the home county after assessment, shall be entitled to receive a portion of the taxes collected by reason of said livestock being fed, pastured, ranged or grazed in a county other than the home county because of the change of ownership of said livestock at the time of its removal, or while being fed or pastured in a pen, field or inclosure.

Section 7. Any person or persons, company or corporation, who is the owner, or has in charge any livestock within this state, who refuses to make the statement or statements as provided in section 1 of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars.

Approved March 8, 1909.

TAX ON LIVESTOCK FOR SPECIFIED PURPOSES.

Chapter 127, Laws 1915, page 282.

"An act directing the levying of a tax on livestock, for the purpose of aiding in the payment of salaries and expenses of the Board of Stock Commissioners, the Board of Sheep Commissioners and the Livestock Sanitary Board and for the payment of indemnity for animals slaughtered and of expenses in investigating and suppressing diseases and for the payment of bounties on wild animals and repealing chapter 49 of the Session Laws of the Twelfth Legislative Assembly, relating to the levying of a tax for the payment of bounties, stock inspection and indemnity purposes."

Be it enacted by the Legislative Assembly of the State of Montana:

Additional Tax Levy to Pay Expense of Enforcing Stock Laws.

Section 1. In addition to appropriations made for such purposes, a tax is hereby authorized and directed to be levied on all livestock in this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the stock laws of the state of Montana and for the payment of bounties on wild animals, as hereinafter specified.

State Board of Equalization to Prescribe Rate of Levy.

Section 2. The State Board of Equalization is hereby empowered and it is made its duty annually to prescribe the levy to be made against live-

stock of all classes for the purpose above indicated and the various boards herein named shall have the right to recommend to said State Board of Equalization the amount of such levy.

Limit of Levy and Fund—Separate Levies.

Section 3. The amount of such levy shall not in any event exceed the sum of one (1) mill which shall be levied to aid in the payment of the general expense of the Board of Stock Commissioners and of the Board of Sheep Commissioners, including salaries, office expense, detective expense, expense of prosecution, travel and all incidental expenses and a separate levy of not exceeding one and one-half ($1\frac{1}{2}$) mills for the use of the State Livestock Sanitary Board for the payment of indemnity for animals slaughtered and of expenses incurred in investigating and suppressing diseases including expenses of quarantine and all expenses incurred for such purposes; provided, that not more than fifty thousand (\$50,000) dollars of said State Livestock Sanitary Board fund shall be set aside as an emergency fund and shall be expended only when said sanitary board determines that an emergency exists, requiring its expenditure and it shall then be expended for such purposes as said sanitary board may order and direct.

Use of Fund Arising from Tax on Sheep.

Section 4. The money received from the tax levied on sheep as provided in the first part of section 3 of this act shall be placed to the credit of the sheep inspection and indemnity fund and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expense of prosecution, travel and other expense of the Board of Sheep Commissioners and the moneys received from the tax on all other stock, as provided in section 3 of this act, shall be placed to the credit of the stock inspection and detective fund to be used for like purposes for said Board of Stock Commissioners. The moneys received from the tax levied by the second division of said section 3, shall be placed in a fund to be known as the State Livestock Sanitary Board fund, to be used by said board for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseases, including quarantine and all expenses connected therewith.

Transmission of Taxes from County to State Treasurer.

Section 5. The taxes levied and the money collected pursuant to the provisions of section 3 of this act shall be transmitted annually with other taxes for state purposes to the state treasury by the county treasurers of each county and such county treasurer shall designate the amount received from the tax levied on sheep and the amount received from the tax levied on all other livestock and shall specify said separate amounts in his report to the State Treasurer and such money when received by the State Treasurer shall be placed to the credit of the funds as provided in section 4 of this act.

Board of Equalization to Prescribe Rate for Bounty—Limit of Tax—Use of Money.

Section 6. The State Board of Equalization shall, in addition to the tax heretofore in this act provided for, annually prescribe the levy to be made against livestock of all classes for the purpose of aiding in the payment of bounties on wild animals killed within this state which tax shall

not in any one year exceed one and one-half ($1\frac{1}{2}$) mill on the dollar upon the assessed valuation of such livestock and such money so received shall be used and applied only in payment of claims for bounty for the killing of wild animals after the passage and approval of this act and the moneys received from the taxes so levied shall be transmitted annually with other taxes for state purposes to the state treasury by the county treasurer of each county and when received by the State Treasurer, shall be placed to the credit of the bounty fund and such money shall thereafter be paid out only on claims duly and regularly presented to the State Board of Examiners in accordance with the law for the payment of bounty for the killing of wild animals.

Registration of Bounty Claims—Interest.

Section 7. All claims for bounty made against the state hereafter if passed, allowed and not paid within a period of thirty (30) days after presentation to and allowance by the State Board of Examiners shall be registered in the office of the State Board of Examiners in a book provided for such purpose and thereafter shall bear interest at the rate of four (4) per cent per annum until paid.

Repealing Clause.

Section 8. Chapter 49 of the Session Laws of the Twelfth Legislative Assembly and all acts and parts of acts in confliction with this act be and the same are hereby repealed.

TAX FOR SUPPORT OF STATE.

Chapter 88, Laws 1909, page 118.

“An act to provide for the suport of the government of the state of Montana, for the years 1909 and 1910.”

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is hereby levied for state purposes upon all the property of the state liable to taxation for the year 1909 an ad valorem tax of two and one-half mills ($2\frac{1}{2}$) on each dollar of the valuation of such property.

Section 2. There is hereby levied for state purposes upon all the property of the state liable to taxation for the year 1910 an ad valorem tax of two and one-half mills ($2\frac{1}{2}$) on each dollar of the valuation of such property.

Section 3. There is hereby levied upon all the property in the state liable to taxation for the year 1909, an ad valorem tax of one-fourth mill on each dollar of the valuation of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemption of the bonds issued by the state of Montana pursuant to the provisions of chapter 58, Laws of 1907.

Section 4. There is hereby levied upon all property in the state liable to taxation for the year 1910, an ad valorem tax of one-fourth mill on each dollar of the valuation of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemption of the bonds issued by the state of Montana pursuant to the provisions of chapter 58, Laws of 1907.

Section 5. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Section 6. This act shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 5, 1909.

This act provided for levying a tax of two and a half mills for state purposes on all property subject to taxation for the years 1909 and 1910. *State v. State Board of Examiners*, 40 Mont. 59, 104 Pac. 1055.

TAX LEVY FOR SUPPORT OF GOVERNMENT.

Chapter 106, Laws 1913, page 446.

"An act to provide for the support of the government of the state of Montana for the years 1913 and 1914."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is hereby levied for state purposes upon all of the property in the state liable to taxation for the year 1913, an ad valorem tax of two and one-half ($2\frac{1}{2}$) mills on each dollar of the valuation of such property.

Section 2. There is hereby levied for state purposes upon all of the property in the state liable to taxation for the year 1914, an ad valorem tax of two and one-half ($2\frac{1}{2}$) mills on each dollar of the valuation of such property.

Section 3. There is hereby levied upon all of the property in the state liable to taxation for the year 1913 an ad valorem tax of one-fourth ($\frac{1}{4}$) mill on each dollar of the valuation of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemption of the bonds issued by the state of Montana pursuant to the provisions of chapter 58, laws of 1907.

Section 4. There is hereby levied upon all property in the state liable to taxation for the year 1914 an ad valorem tax of one-tenth ($\frac{1}{10}$) mill on each dollar of the valuation of all such property for the purpose of paying interest on and to constitute a sinking fund for the redemption of the bonds issued by the state of Montana pursuant to the provisions of chapter 58, laws of 1907.

Section 5. There is hereby levied upon all of the property in the state liable to taxation for the year 1913 an ad valorem tax of one-fourth ($\frac{1}{4}$) mill on each dollar of the valuation of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemption of the bonds issued by the state of Montana pursuant to the provisions of chapter 144, laws of 1911.

Section 6. There is hereby levied upon all property in the state to taxation for the year 1914 an ad valorem tax of one-fourth ($\frac{1}{4}$) mill on each dollar of the valuation of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemption of the bonds issued by the state of Montana pursuant to the provisions of chapter 144, Laws of 1911.

Section 7. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Section 8. This act shall be in full force and effect from and after its passage and approval.

Approved March 15, 1913.

TAX LEVY FOR SUPPORT OF GOVERNMENT.

Chapter 75, Laws 1911, page 142.

"An act to provide for the support of the government of the state of Montana, for the years 1911 and 1912."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is hereby levied for state purposes upon all the property of the state liable to taxation for the year 1911 an ad valorem tax of two and one-half mills ($2\frac{1}{2}$) on each dollar of the valuation of such property.

Section 2. There is hereby levied for state purposes upon all property of the state liable to taxation for the year 1912 an ad valorem tax of two and one-half ($2\frac{1}{2}$) mills on each dollar of the valuation of such property.

Section 3. There is hereby levied upon all the property in the state liable to taxation in the year 1911, an ad valorem tax of one-fourth mill on each dollar of the valuation of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemption of the bonds issued by the state of Montana pursuant to the provisions of chapter 58, Laws of 1907.

Section 4. There is hereby levied upon all property in the state liable to taxation for the year 1912 an ad valorem tax of one-fourth mill on each dollar of the valuation of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemption of the bonds issued by the state of Montana pursuant to the provisions of chapter 58, Laws of 1907.

Section 5. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Section 6. This act shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 2, 1911.

TAX LEVY FOR SUPPORT OF GOVERNMENT.

Chapter 30, Laws 1915, page 44.

"An act to provided for the support of the government of the state of Montana for the years of 1915 and 1916."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is hereby levied for state purposes upon all the property in the state liable to taxation for the year 1915, an ad valorem tax of two and one-half ($2\frac{1}{2}$) mills on each dollar of the valuation of such property.

Section 2. There is hereby levied for state purposes upon all the property in the state liable to taxation for the year 1916, an ad valorem tax of two and one-half ($2\frac{1}{2}$) mills on each dollar of the valuation of such property.

Section 3. There is hereby levied upon all the property in the state liable to taxation for the year 1915 an ad valorem tax of one-fourth ($\frac{1}{4}$) mill on each dollar of the valuation of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemp-

tion of the bonds issued by the state of Montana pursuant to the provisions of chapter 144, Laws of 1911.

Section 4. There is hereby levied upon all property in the state liable to taxation for the year of 1916 an ad valorem tax of one-fourth ($\frac{1}{4}$) mill on each dollar of the valuation of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemption of the bonds issued by the state of Montana pursuant to the provisions of chapter 144, Laws of 1911.

Section 5. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Section 6. This act shall be in full force and effect from and after its passage and approval.

Approved February 25, 1915.

REGULATION OF GRAIN ELEVATORS AND WAREHOUSES.

Chapter 93, Laws 1915, page 147.

"An act relating to grain elevators, grain warehouses, and place where grain is stored; establishing a state grain inspection department and a grain grading commission; providing for the appointment of a Chief Grain Inspector, his deputies, and other employees, prescribing their duties and powers, and fixing their salaries and terms of office; establishing licenses for conducting the business of public warehousemen, grain dealers, or track buyers; fixing the fees for inspection and weighing grain under the terms of this act; substituting this act for chapter forty-seven (47) of the Laws of the Thirteenth Legislative Assembly, and repealing said chapter forty-seven (47), but continuing the validity of the appointment of officers, bonds executed, and licenses issued thereunder."

Be it enacted by the Legislative Assembly of the State of Montana:

Department of State Grain Inspection.

Section 1. A department of record for the inspection and weighing and the regulation of the handling, storing, and shipping of grain is hereby established, to be called "State Grain Inspection Department." Said department, hereafter referred to in this act as "The Department," shall have full charge of the inspection and weighing, and the regulation of the handling, storing, and shipping of grain in the state of Montana, and elsewhere as may be deemed necessary for the protection of the interests of the grain trade and the grain-growers of the state.

Chief Grain Inspector—Appointment, Qualifications and Removal.

Section 2. It shall be the duty of the Governor to appoint a suitable person, to be confirmed by the Senate, who shall be known as the Chief Grain Inspector of the state of Montana, whose term of service shall be designated by the Governor, not exceeding two years, and may be limited by the Governor to parts of a year, and who may be removed by the Governor at any time, with or without cause. Said Chief Grain Inspector shall not be interested in the buying or selling of grain, either on his own account or for others, nor shall he be directly or indirectly interested in the handling or storing of grain as a grain warehouseman or on private account, during his term of office.

Chief Deputy Inspector and Other Appointees.

Section 3. It shall be the duty of the Governor, if he deems it necessary for the proper enforcement of this act, to appoint a Chief Deputy Inspector, who shall act as assistant to the Chief Grain Inspector, with such powers and authority as may be assigned to him by the Chief Grain Inspector; a chief clerk, to whom shall be assigned the duties of keeping the records and books and such other duties as may be required of him; a stenographer; and such other employees as may be necessary to properly conduct the business of the department. The Chief Grain Inspector shall recommend to the Governor suitable persons for appointment as grain inspectors, who shall be appointed if deemed necessary by the Governor, and who shall perform such duties as may be assigned to them by the Chief Grain Inspector. All appointments provided for in this section shall be made in the same manner as that of Chief Grain Inspector, except that they need not be confirmed by the Senate; and all persons so appointed may be removed in the same manner as has been provided for the removal of the Chief Grain Inspector.

Oaths and Bonds of Inspectors and Employees.

Section 4. All officers and employees appointed under this act shall, before entering upon the duties of office, take the constitutional oath of office. The following shall execute bonds to the state of Montana in the following penal sums: The Chief Grain Inspector in the penal sum of ten thousand dollars; the Chief Deputy Inspector in the penal sum of five thousand dollars; the chief clerk and each grain inspector in the penal sum of two thousand dollars; with sureties, conditioned in the same manner as the bonds of other appointive state officers or employees; and that each person so bonded will pay all damages to any person or persons who may be injured by reason of his neglect, refusal, or failure to comply with the law or the rules and regulations of the department. For filing oath of office and issuing commission to any person appointed under this act, the Secretary of State shall charge a fee not exceeding two dollars to each person.

Salaries and Expenses of Officers and Employees.

Section 5. The Chief Grain Inspector shall receive a salary of two hundred and fifty dollars per month; the Chief Deputy Inspector shall receive a salary of one hundred and fifty dollars per month; the chief clerk and each grain inspector shall receive a salary of one hundred and twenty-five dollars per month; the stenographer shall receive a salary of one hundred dollars per month. The Chief Grain Inspector, the Chief Deputy Inspector, and the chief clerk shall receive all actual and necessary traveling expenses, paid in cash, while attending to their official duties. Each grain inspector, if assigned to traveling duties, shall receive all actual and necessary traveling expenses, paid in cash, and if assigned to an inspection point, shall receive all actual and necessary traveling expenses, paid in cash, incurred in going to or returning from the place to which he is assigned to work. All salaries and expenses shall be paid monthly in the same manner as the salaries and expenses of other appointive state officers or employees.

Powers of Chief Inspector—Rules and Regulations—Records—Complaints.

Section 6. The Chief Grain Inspector shall have the general management of the affairs of the department and the supervision of the inspection,

weighing, handling, storing, and shipping of grain, as provided for in this act or the laws of the state. He shall establish necessary rules and regulations therefor and for the management of the grain warehouses, grain elevators, and public warehouses in this state, subject to the approval of the Governor, such rules and regulations as may be necessary to enforce the provisions of this act, or any laws of this state in regard to the same. All such rules and regulations shall be published in three consecutive issues of at least three newspapers of general circulation in this state, and at least once in a farm journal published in this state. It shall be the duty of the Chief Grain Inspector to keep records of all the inspecting and weighing done by the department, of all licenses issued, and of all other work performed by the department, for which purpose he shall have provided books, blanks, and other material needed in order to keep perfect and proper records. He shall investigate all complaints of fraud or oppression in the grain trade and correct the same, so far as may be in his power.

Office of Inspector—Samples of Grades of Grain—Inspection of Cars.

Section 7. The Chief Grain Inspector shall have his office at the state capitol in the city of Helena. He shall furnish any grain dealer in the state with standard samples of the different grades of grain, as established by official inspection, whenever requested to do so, at the actual cost of such samples, when it is possible to secure them. He shall place a grade and determine the dockage on any samples of grain that may be sent to him, for which service no charge shall be made. He shall cause to be forwarded to the owner or consignee of any grain inspected or weighed, a certificate of inspection or weight, as the case may be, whenever the name and address of such owner or consignee is known to the department. The Chief Grain Inspector, or any officer or employee of the department, is hereby authorized to break the seals of any carload of grain for the purpose of entering car for inspection, at any place in the state, and also to reseal any such car; provided, a record of each seal broken and each seal replaced, with the car number, must be kept and turned over to the nearest agent of the common carrier in whose possession the car is at the time of such inspection. Cars shall not be left open or without seals any longer than is actually necessary to properly perform the work of inspection.

Penalty for Neglect of Duty.

Section 8. Any officer or employee of the department who shall be guilty of neglect of duty, or who shall knowingly or carelessly perform his duties improperly, or who shall accept money or other valuable thing or consideration, directly or indirectly, in consideration of the performances, or the nonperformance or neglect of any duty, or any other matter or thing concerning his office or employment, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars, or imprisonment not more than six months in the county jail, or shall suffer both such fine and imprisonment.

Bribery of Officer or Employee.

Section 9. Any person who shall bribe or offer to bribe any of the officers or employees of the department appointed under this act, shall be deemed guilty of a felony and shall be punished as provided for in section 8178 of the Revised Codes.

Monthly Reports of Fees and Money Collected.

Section 10. It shall be the duty of the Chief Grain Inspector, on or before the 10th day of each month, to file with the State Auditor a report under oath, showing in detail the amount of work performed by the department during the preceding month for which compensation was received or charged for, and the amount of revenue collected by the department; and at the time of filing such report, pay to the State Treasurer all moneys received by the department during the month for which report was made.

Meaning of Word "Grain."

Section 11. Where the word "grain" is used in this act, or in the rules and regulations of the department, it shall be held to mean also flaxseed, except where specifically referred to as flax or flaxseed.

Meaning of Word "Inspection"—Weighers—Fees.

Section 12. Where the word "inspection" is used in this act, it shall be held to mean also the weighing of grain without extra charge whenever proper facilities are provided for weighing. All grain inspectors shall be weighers also. When deemed advisable for the best interest of any party concerned, inspection may be made without weighing or weighing without inspection. The fees provided for inspection shall apply to either inspection or weighing when done separately, or to both when there is inspection and weighing of the same lot of grain.

Places Where Inspection Shall be Established—Fees for Inspection.

Section 13. Inspection of grain shall be established at such points as may be deemed necessary by the Chief Grain Inspector, subject to the approval of the Governor, and for such inspection that may be performed by the department, a fee, not exceeding twenty-five cents for each wagon-load or one dollar for each carload, shall be paid by the owner of such grain. Any lot of grain, not in cars or wagons, that may be inspected shall be charged for at the rate of not less than twenty-five cents for each lot or more than one dollar for each thousand bushels. Inspection may be established at points where the expenses of such inspection are guaranteed by responsible parties, and also at such points where competent inspectors may be secured who will accept the fees fixed by the Chief Grain Inspector in lieu of all other compensation. Inspectors appointed under the fee system shall be subject to all the provisions of this act relating to grain inspectors, except in regard to salary and expenses. Special arrangements may be made for inspection at points where regular inspection has not been provided for and fees may be charged sufficient to cover the actual expense incurred in the work. All inspection fees provided for in this section shall be paid to the department by the purchasers or consignees.

Inspection of Grain in Transit.

Section 14. The Chief Grain Inspector is hereby authorized to establish, with the approval of the Governor, the inspection of any grain grown in this state that may be in transit destined to points either in this state or elsewhere, when such inspection is deemed necessary for the protection of the interests of the state, or of the grain trade or grain-growers of the state. The fees for such inspection shall not exceed one dollar per carload and shall be collected from the common carriers in whose possession the grain may be at the time of inspection, and shall by such common carriers be paid to the department. Such inspection fees shall be treated by the

common carriers as advanced charges and may be collected by them with the freight. The Chief Grain Inspector may make such arrangements with the common carriers for settlement with the department as may be approved by the Governor, but shall have the right and authority to demand of the common carriers, and to receive from them all such inspection fees, at the time such inspection is done. The places at which such inspection shall be done shall be designated by the Chief Grain Inspector, with the approval of the Governor, and, when deemed necessary for the purpose of facilitating the movement of cars, it may be done at points outside the state of Montana. When inspection points are established outside the state of Montana, it may be done only when the common carriers agree that it shall have the same effect under this act as if done in the state of Montana, and that the penalties for the violation of this act shall not be altered in any manner thereby.

Inspectors Outside of State.

Section 15. The Chief Grain Inspector may, with the approval of the Governor, assign grain inspectors to represent the state of Montana at terminals or grain markets outside the state, when it appears that conditions at such terminals or grain markets justify such assignments.

Duty of Owners to have Grain Inspected.

Section 16. Whenever and wherever inspection of grain is established in the state, as provided in this act, it shall be the duty of the owner or owners of any grain sold or delivered at, or taken or shipped to any place where inspection has been established, to cause all of such grain to be inspected and weighed by the official grain inspector at such place, and fully paid to such inspector the fees established as herein provided, and to deliver to the purchaser or consignee of such grain the certificate of inspection and weights.

Inspection Fees a Lien on Grain.

Section 17. The fees for inspection, fixed under this act, shall be a lien on the grain inspected.

Change of Inspection Fees.

Section 18. Inspection fees provided for in this act may be changed from time to time (within the limit named in the act) by the Chief Grain Inspector, with the approval of the Governor. Such changes may not be made oftener than once in six months and notice of such changes must be published in the manner provided for the publication of the rules and regulations of the department. Said changes may not become effective within thirty days of the date of first publication. Common carriers, on whose lines inspection of grain in transit has been established, shall be given thirty days' notice, through their legal representatives, of any changes in inspection fees.

Reinspection of Grain.

Section 19. Any interested party, who may be aggrieved by the grade placed on any lot of grain, may call for the reinspection of the same by depositing one dollar with the Chief Grain Inspector. When reinspection is called it shall be the duty of the Chief Grain Inspector or the Chief Deputy Inspector to place a grade on such grain. If the grade is changed in favor of the party calling the reinspection, the deposit of one dollar shall

be refunded to him; and if not changed in his favor the deposit shall be placed with other funds of the department. No claim for reinspection may be allowed after ten days from the date of original inspection. Grades fixed by reinspection shall be final.

Refusing or Hindering Inspection—Penalties.

Section 20. The refusal to permit inspection of grain under this act, or the attempt to hinder any officer or employee of the department in the discharge of his duties, shall constitute a misdemeanor and, upon conviction, shall be punishable by a fine of not less than twenty-five dollars nor more than five hundred dollars.

Inspection by Unauthorized Persons—Penalties.

Section 21. The official inspection of grain in this state must be performed by such persons as may be duly appointed and qualified according to law, and any person who shall act as official inspector of grain, who has not been first appointed and qualified, shall be deemed guilty of a misdemeanor.

Establishment of Grain Grading Commission.

Section 22. A Grain Grading Commission is hereby established, which shall consist of the Chief Grain Inspector, the Chief Deputy Inspector, and the instructor in charge of the Department of Agronomy at the State Agricultural College, and which shall each year, on a date to be fixed by the Chief Grain Inspector, establish a grade for all kinds of grain grown or handled in this state, which shall be known as "Montana Grades." Notice of such meeting shall be published in at least three newspapers of general circulation in the state, for three consecutive insertions prior to the date fixed for such meeting; and the grades established shall be published in the manner provided in this act for the publication of the rules and regulations of the department.

Meaning of Word "Warehouse."

Section 23. The word "warehouse," wherever used in this act, shall be held to mean any grain elevator, warehouse, flour-mill, or other building in which grain is stored, or handled with a view of shipping therefrom in carload lots, or used for milling grain.

The term "public warehouse," wherever used in this act, shall be held to mean any warehouse in which grain is stored in such manner that the grain of various owners is mixed together and the identity of the different lots or parcels not preserved.

License and Classification of Grain Dealers.

Section 24. Each person, firm, association, or corporation engaged in the business of buying grain for shipment in carload lots, or for milling, shall be required to be licensed by the department, and all such grain buyers shall be classified as follows; those operating warehouses (not public warehouses) to be known as grain dealers, and to be licensed as such; those operating public warehouses to be known as public warehousemen, and to be licensed as such; those operating neither warehouse nor public warehouse to be known as track buyers, and licensed as such.

Application for License.

Section 25. Before any license may be issued application shall be made to the department in writing, setting forth the name and address of the

applicant, the name and address of each person interested in the ownership or management of the business (if a corporation, the name and address of the president and secretary only shall be required), the address of the main office or headquarters of applicant, the form of license desired, the location and capacity of each warehouse or public warehouse operated by applicant, whether owned or leased by applicant, and such other information as may be required by the rules and regulations of the department.

Issuance and Revocation of License.

Section 26. It shall be the duty of the Chief Grain Inspector to issue licenses upon receipt of application in proper form,—one grain dealer's license for each warehouse for which application is made; one public warehouseman's license for each public warehouse for which application is made and bond filed, as hereinafter provided for; one track buyer's license upon each application, when bond is filed as hereinafter provided for. All licenses shall give authority to carry on and conduct the businesses of grain dealer, public warehouseman, or track buyer,—as the case may be,—in accordance with the laws of the state, and shall be revocable by the Chief Grain Inspector, after approval of his decision by the Attorney General, upon complaint being made in writing, setting forth the particular violation of the law, and upon due notice and hearing and sufficient proof. Violations of this act, or of the laws of the state, or of the rules and regulations of the department, will be considered sufficient cause for the revoking of licenses. The Chief Grain Inspector may refuse to issue licenses to any person or concern whose licenses have once been revoked.

Bond of Public Warehouseman to be Filed With Secretary of State.

Section 27. Before receiving a public warehouseman's license each applicant shall file with the Secretary of State a bond to the state of Montana, for the benefit of all parties interested, with sureties to be approved by the Chief Grain Inspector, in the penal sum of not less than ten thousand dollars nor more than one hundred thousand dollars, in the discretion of the Chief Grain Inspector, conditioned upon the faithful performance of all duties as a public warehouseman and full compliance with the laws of Montana, enacted or to be enacted in relation thereto; provided, that when application is made for more than one license for public warehouses operated by the same concern, but one bond shall be required. A fee of one dollar shall be paid to the Secretary of State for filing each bond.

Track Buyer's Bond.

Section 28. Before receiving a track buyer's license each applicant shall file with the Secretary of State a bond to the state of Montana for the benefit of all parties interested, with sureties to be approved by the Chief Grain Inspector, in the penal sum of ten thousand dollars, conditioned upon the faithful performance of all duties as a track buyer and full compliance with all the laws of Montana enacted or to be enacted in relation thereto. A fee of one dollar shall be paid to the Secretary of State for the filing of each bond.

Transaction of Business Without License—Penalty.

Section 29. Any person who shall transact the business of grain dealer, public warehouseman, or track buyer, without first procuring license as hereinbefore provided, or who shall continue to transact any such business after such license has been revoked (save only that public warehouse-

men shall be permitted to deliver property previously stored) shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in a sum of not less than twenty-five dollars nor more than one hundred dollars. Each day that any such business is carried on without a license shall constitute a separate offense.

Duty of Warehousemen to Receive Grain—Payment of Inspection Fees by Warehousemen.

Section 30. It shall be the duty of every public warehouseman to receive for storage any grain, dry and suitable for warehousing, that may be tendered to him in the usual course of such business, not making any discrimination in the persons desiring to avail themselves of storage facilities. No public warehouseman shall be required to receive grain for storage in any warehouse where there is not sufficient room to store it properly, or in cases where such warehouse is necessarily closed. If grain going into or out of public warehouses is inspected by the state, the fees for such inspection shall be paid by the public warehouseman and added to the charges for storage. The Chief Grain Inspector may recover all inspection fees from the public warehouseman, in case the same shall not have been paid to the state, by an appropriate action.

Storage Receipts.

Section 31. It shall be the duty of each public warehouseman to issue to the owner of the grain, or to his order, a storage receipt for each lot of grain received into store by him. Storage receipts shall be consecutively numbered in such manner that no two receipts bearing the same number shall be issued from one warehouse in the same year, except in the case of a lost or destroyed receipt, when a duplicate may be issued bearing the same date and number as the original and plainly marked "Duplicate." Each storage receipt shall bear date corresponding with the date of the receipt of the grain for storage; shall show on its face the kind and grade of grain received and that it has been stored with grain of the same kind and grade; shall bear the name of the concern issuing it and the place of issue (with headquarters or main office, if elsewhere); the name of the person grading and weighing the grain; the weight in pounds, gross, tare, and net; the gross bushels; the dockage (if any); and the net bushels and that a similar quantity and grade of grain shall be deliverable upon the return of the storage receipt properly indorsed by the person to whose order it was issued, and the payment of the proper charges for storage and handling. Storage receipts shall indicate that stored grain is insured for the benefit of the owner and shall show the rates of storage provided for in this act. Storage receipts must be in such form as may be prescribed by the Chief Grain Inspector. No public warehouseman shall insert in any storage receipt any language limiting or modifying his liabilities or responsibilities, as imposed by law.

Delivery of Grain upon Surrender of Receipt.

Section 32. On the return and surrender of any storage receipts and payment of lawful charges, the grain represented therein shall be immediately deliverable to the owner or his order and the storage receipt shall be marked "Canceled" upon its face, and the grain shall not be subject to any further charges for storage after demand for delivery shall have been made and facilities for receiving the same have been provided. If not delivered within twenty-four hours after such demand, the public warehouse-

man shall be liable to the owner for all damages occasioned thereby; provided, that if he shall deliver to different owners in the order demanded and as rapidly as it can be done by ordinary diligence, he shall not be held in default.

Records and Reports of Public Warehousemen.

Section 33. Public warehousemen shall keep records of each lot of grain received into store, of each receipt issued, and of each receipt canceled by the delivery or purchase of the grain. Such records shall be in such form as may be prescribed by the Chief Grain Inspector. Public warehousemen shall make reports (under oath) to the Chief Grain Inspector whenever requested to do so, of the amount of grain received into store and delivered from store and in what manner delivered, and any other information that may be demanded of them relating to the storage of grain; and shall permit the examination of all books, records, and warehouses by any duly authorized officer or employee of the state at any time during business hours.

Delivery of Stored Grain in Carload Lots.

Section 34. Stored grain may be delivered, in carload lots, at the option of the owner, at any terminal elevator or at any station on the line of the same railroad where it was originally stored, upon the payment of the necessary charges for freight and other charges provided for in this act.

Delivery of Grain Deemed Bailment.

Section 35. The delivery of grain to any public warehouseman for storage, although it may be mixed with that of others, or shipped or removed from the original place of storage, shall be deemed a bailment, and not a sale.

Storage Charges—For Flax.

Section 36. The charges for storage of grain except flax, in public warehouses shall not exceed the following rates: for receiving, elevating, insuring, and delivering, and the first fifteen days' storage, or part thereof, two cents per bushel; for storage thereafter one-half cent for each fifteen days, or part thereof, until it shall have been in store ninety days, and thereafter one-half cent for each twenty days, or part thereof. For flax, the charges for the first fifteen days, or part thereof, shall be three cents per bushel, and thereafter the same as on grain.

Liabilities of Warehousemen—Fire or Heating.

Section 37. Public warehousemen shall be held responsible for any loss or damage to grain by fire while in their custody, and for loss by heating unless it is proven that such loss or damage by heating was not caused by any lack of care on the part of such public warehouseman, his servants or agent. Any public warehouseman guilty of any act or neglect the effect of which is to depreciate any property in his custody, shall be held responsible therefor to the person damaged thereby, and the bond of such public warehouseman shall be held for all damages so occasioned.

False or Prohibited Weights or Measures—Excessive Dockage.

Section 38. Any person, firm, public warehouseman, corporation, or officer or employee thereof, or any public officer who shall use any false weights or measures, or any weights, measures, or measuring device, or

scales, not tested and sealed by the State Sealer of Weights and Measures, as required by law, or who shall give or return any fraudulent or false weights or measures of any grain, wagon, car, or other vehicle in which such grain is or has been weighed, or of any container of grain, or who shall take more dockage on any lot of grain than the amount that actually exists in such lot of grain, or who shall take dockage on any other grains than those on which dockage is taken at the terminal markets in the state of Minnesota, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25) or more than three hundred dollars (\$300), or by imprisonment in the county jail for not less than sixty (60) days, or more than one (1) year, or by both such fine and imprisonment.

Records to be Kept by All Grain Dealers, Warehousemen and Track Buyers.

Section 39. All grain dealers, public warehousemen, and track buyers licensed under this act shall keep proper and correct records of all grain bought, shipped, milled, or sold by them, designating the kind and grade of each lot, the true weights, gross and net, and the dockage (if any); all such records to be in such form as shall be prescribed by the Chief Grain Inspector; and they shall be required to make such reports under oath, as may be requested of them, and at such times as may be designated by the Chief Grain Inspector. All such books and records and all warehouses and public warehouses shall at all times during business hours be open to the inspection of the Chief Grain Inspector or any duly authorized officer or employee of the state.

Authority of Department to Make Examinations.

Section 40. Authority is hereby given to the department to examine the records of any grain dealer, track buyer, or public warehouseman; the contents of any warehouse or public warehouse; the records of any common carrier engaged in transporting grain in the state, either to points within or outside the state.

Cleaning of Grain and Charges Therefor.

Section 41. When cleaning facilities are provided in any warehouse or public warehouse, grain shall be cleaned at the request of the owner for not exceeding one cent per bushel. Screening shall be delivered to the owner of the grain upon demand.

Grain Inspection Fund—Payment of Expenses—Changes in Fees.

Section 42. A fund is hereby established, to be known as the grain inspection fund, which fund shall be credited by the State Treasurer with all moneys deposited by the State Grain Inspection Department, as in this act provided, and all salaries and expense of the department, authorized by law, shall be paid out of and charged to the said grain inspection fund. The State Treasurer is hereby authorized to transfer to the grain inspection fund any funds in the state treasury available for the use of the department at the time this act may become effective. If, in the opinion of the Governor, the grain inspection fund is larger than is necessary to properly conduct the work of the department, the fees or charges shall be reduced, at the time and in the manner provided for in this act. In like manner the fees or charges may be increased, within the limit named in this act, if deemed advisable by the Governor for the proper enforcement of this act.

Violations of Act—Penalty.

Section 43. The violations of any of the provisions of this act, not specifically provided for in the various sections thereof, by any railroad company, common carrier, person, firm, association, corporation, or any employee, agent, representative, or officer thereof, shall constitute a misdemeanor and shall, upon conviction, be punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.

Issuance of False or Fraudulent Receipts—Penalty.

Section 44. It shall be deemed a felony for any person, either as an individual or as an officer, agent or employee, or in the name of any corporation, person, firm, or association, to issue a false or fraudulent storage or warehouse receipt, or any receipt which purports to be or is represented to be a receipt for grain stored or for storage, when such grain has not been received, or for a greater quantity than has been received or stored; or to, in any manner, issue or refuse to issue a storage receipt, for the purpose of defrauding any person or persons, company, or corporation; and any person convicted thereof shall be punished by a fine of not less than one thousand dollars (\$1000) or more than five thousand dollars (\$5000), or by confinement in the state penitentiary for not less than one year or for more than five (5) years, or by both such fine and imprisonment.

Duty of Attorney General—Prosecutions.

Section 45. The Attorney General shall be ex-officio attorney for the department and shall give all necessary advice to the department. All criminal prosecutions shall be made in the name of the state of Montana by the Attorney General or proper county attorney.

Repeal of Prior Statute.

Section 46. This act shall be a substitute for chapter forty-seven (47) of the Laws, Resolutions and Memorials of the state of Montana, passed by the Thirteenth Regular Session of the Legislative Assembly, in its entirety, and said chapter forty-seven (47) is hereby repealed; but said repeal shall not affect the validity of or the continuing in force of the appointment of any officer thereunder, or his term of office or his official bond, or any bond given or any license issued in pursuance of the provisions of said repealed chapter.

Section 47. All acts and parts of acts in conflict with this act are hereby repealed.

Section 48. This act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1915.

GRAIN ELEVATORS ON RAILROAD RIGHT OF WAY.

Chapter 43, Laws 1913, page 60.

"An act providing a summary method for procuring the right to erect a grain warehouse or grain elevator on railroad rights of way."

Be it enacted by the Legislative Assembly of the State of Montana:

Location of Grain Warehouse or Elevator on Right of Way—Preliminary Proceedings.

Section 1. Any person, firm or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment or storage of grain (including flaxseed) for the public for hire may make application in writing, containing a description of that portion of the right of way of said railroad on which such person, firm or corporation desires to erect a warehouse or elevator, and the size and capacity of the warehouse or elevator proposed to be erected and the time for which it is desired to maintain such warehouse or elevator, to the person, firm or corporation owning, leasing or operating the railroad at such station or siding for the right, privilege and easement of erecting and maintaining for the time stated in such application, and for reasonable compensation for such warehouse or elevator as aforesaid upon the right of way pertaining to such railway at such siding or station and within and between the outside switches of the yard of such railway station or siding and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege and easement aforesaid, shall absolutely and unconditionally be entitled to the same. Provided, however, that if the person, firm or corporation owning, leasing or operating the railroad is not willing that the portion of the right of way selected by the applicant should be appropriated for such purpose and the parties cannot agree as to the quantity and location of the land upon which such grain warehouse or grain elevator shall be erected the matter shall be determined by the district court in the same manner and by the same proceeding for determining the amount of compensation to be paid where the parties cannot agree as to the amount.

Jurisdiction of District Court.

Section 2. The application provided in section 1 of this act shall also state the amount the applicant deems reasonable compensation for the right, privilege and easement he desires to acquire, and said applicant shall tender and pay to such person, firm or corporation from whom such easement is sought, the sum stated in such application, and in case the amount so named and tendered is not accepted, and the parties cannot agree on the amount to be paid for such right, privilege and easement, the same shall be ascertained, assessed and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege and easement sought is situated, which court is hereby given full jurisdiction in the premises, and shall at all times be deemed open and in session for the purposes of this article. It shall be the duty of any person, firm or corporation to whom application is made for the right to erect and maintain an elevator or warehouse, under the provisions of this article to within thirty days after the receipt of such application notify said applicant in writing of the acceptance or rejection of the amount stated in said applica-

tion to be reasonable compensation for the right, privilege and easement sought to be acquired, and in case such person, firm or corporation fails to notify the applicant within said thirty days, such person, firm or corporation shall be deemed to have accepted said amount and upon the payment or tender thereof said applicant shall be deemed to have acquired the right, privilege and easement applied for.

Proceedings in District Court.

Section 3. Proceedings in the district court shall be instituted and carried on as follows: The parties seeking the right, privilege and easement aforesaid shall present to and file with the district court a petition in writing and under oath, specifying and describing the right, privilege and easement sought, and the time for which the same is sought and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor. A copy of the application for such privilege shall be attached to said petition, and thereupon it shall be at once the duty of the court by its order in writing to fix a time, not more than thirty days thereafter within which the said person, firm or corporation so owning, managing or controlling such railroad shall appear and join issue in said proceeding; such notice shall be served as a summons is served in civil actions, and shall be ample notice to the parties so served to appear and join in the proceedings, and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceeding. The manner of joining issue and the procedure at the trial shall be the same as that in any other civil action at law. The trial of such issue shall be expedited by the court as much as possible. At the trial the court or jury, as the case may be, shall find and assess the compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege and easement sought, and immediately after the finding or verdict has been made, the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found, and in case such election is not made by said party, then the other party to the proceedings may make such election, and after election is made as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found, or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid, and for the time therein specified; and thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege and easement aforesaid. In case the annual rental is elected, the same shall be paid yearly in advance, and if not so paid after thirty days' default the right, privilege and easement aforesaid shall be absolutely forfeited.

Appeals to Supreme Court.

Section 4. Within thirty days after the entry of said judgment as hereinbefore provided, but not later, an appeal may be taken by either party to the supreme court; but such appeal shall not stay or hinder the use or enjoyment of to the fullest extent of the right, privilege and easement asked for by the petition and conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court in an amount double the gross sum or annual rental,

conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises. Costs and disbursements, as in civil actions, in each court, shall be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party. But if the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party. Either party may appeal from that part of the judgment determining the quantity and location of the land upon which such warehouse or elevator is to be erected, and in the event of such appeal the judgment shall be suspended pending the appeal.

Elevators to be Deemed Public.

Section 5. All elevators and warehouses erected and maintained under the provisions of this article, shall be deemed public elevators, and public warehouses, and shall be subject to legislative control.

Time Limit for Construction of Elevator.

Section 6. Any person, firm or corporation availing themselves of the provisions of this act, shall, within sixty days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court commence the erection of the warehouse or elevator mentioned in the application, and complete the same within ninety days thereafter, and in case of failure to comply with the provisions of this section, such person or persons shall be deemed to have abandoned the right acquired, and the part or portion of the railroad right of way described in the application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of this act.

Connection of Railroad With Elevator—Sidetracks.

Section 7. Every railroad company or corporation organized under the laws of this state, or doing business therein, shall, upon application in writing provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at stations; and every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator without reference to its size, cost or capacity, where grain is or may be stored; provided, that such railroad company shall not be required to construct or furnish any sidetracks except upon its own land or right of way; provided, the reasonable cost of the construction of such sidetracks and connections, except the cost of the rails and fastenings, shall be paid by the person or persons for whose benefit such sidetracks are provided or connections made; provided, further, that such elevators and warehouses shall not be constructed within one hundred feet of any existing structure, and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road; and where stations are ten miles or more apart, the railroad company, when required so to do by the Board of Railroad Commissioners of the state of Montana shall construct and maintain a sidetrack for the use of shippers between such stations.

Section 8. All acts and parts of acts in conflict with this act are hereby repealed.

Section 9. This act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1913.

WATER USERS' ASSOCIATION.

Chapter 29, Laws 1915, page 43.

"An act to provide for the transfer and classification of the capital stock, election of directors and the filling of vacancies on the board of directors of the Water Users' Association, organized under the laws of the United States, the laws of the state of Montana and the Reclamation act of June 17, 1902."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That shares of stock of Water Users' Association, organized in conformity with the requirements of the laws of the United States and the State of Montana and under the Reclamation Act of June 17, 1902, and which shares of stock, by the articles of incorporation of said association, are inseparably appurtenant to the lands for which they are subscribed, shall, upon the presentation of proof to such association of the transfer of any of said land, be transferred on the books of said association, by the proper officers of the association, to the grantee or successor in title to said land.

Section 2. The assessable stock of any such Water Users' Association, heretofore mentioned, may at the time of any assessment made, after the major portion of such irrigation project is completed and the irrigable area thereunder determined, be one share for each irrigable acre and appropriate by-laws of the association may provide for the discharge of assessments levied on stock appurtenant to lands then determined to be nonirrigable.

Section 3. That such Water Users' Association shall be permitted to divide the area under such irrigation project into as many districts as there are directors provided for in its articles of incorporation and each district shall elect one director for a term not to exceed five years. Provided, however, that at the first election held to elect directors under the provisions of this act, each district shall elect one director who shall hold office for such a term of years as the by-laws shall provide and thereafter, a director shall be elected in the district and at the annual election held just prior to the expiration of the term of office of the director of that district.

Section 4. In case of a vacancy on the board of directors from any cause, the board shall fill such vacancy by appointment to hold to the end of that fiscal year and a director shall be elected at the annual election in the district where such vacancy occurs to fill the unexpired term of such vacancy.

Section 5. All acts or parts of acts in conflict herewith are hereby repealed.

Approved February 25, 1915.

RECORDS OF WATER USERS' ASSOCIATION.

Chapter 68, Laws 1909, page 86.

“An act providing for the furnishing and use of blank form books for the recording of stock subscriptions and contracts, and of articles of incorporation and stock certificates of water users' associations organized under the National Reclamation Act, and prescribing the fees for such recording.”

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The county commissioners of each county where water users' associations, organized in conformity with the laws of the United States, under the Reclamation Act, have organized, or wherein such associations shall hereafter organize, are required to furnish the county recorder, for the proper recording of stock subscriptions and contracts, and of articles of incorporation and stock certificates of such companies, books to conform to such articles of incorporation, stock certificates and contracts as are used by the secretary of such water users' associations, containing printed blank forms of such stock subscriptions and contracts, and articles of incorporation and stock certificates, in accordance with the laws of the United States and of the state of Montana, such forms to be prepared by the Attorney General and used by the county recorder for the recording of all such stock subscriptions, contracts, articles of incorporation and stock certificates.

The county recorder shall charge fifty cents for recording each stock subscription, and contract, stock certificate and articles of incorporation.

Section 2. That chapter 68, Laws of 1905, and all acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 4, 1909.

CHANGE OF NAME OF STREAM OR LAKE.

Chapter 101, Laws 1911, page 175.

“An act for the changing of names of any natural stream, watercourse, spring, dry coulee, creek, river, lake and other natural source of water supply, which lies wholly within the limits of one county.”

Be it enacted by the Legislative Assembly of the State of Montana:

Application to District Court for Change of Name of Watercourse.

Section 1. All applications for the change of names of any watercourse or natural source of water supply, including natural streams, dry coulees, springs, lakes, rivers, or creeks, which lie wholly within the limits of one county, must be made to the district court of the county where the said watercourse or other natural source of water supply, the name of which is proposed to be changed, or some part thereof, is situated. The petition must state in ordinary and concise language:

(a) A description of the said watercourse or other natural source of water supply, the name of which is proposed to be changed, identifying the same as near as may by natural monuments.

(b) The present name of the said stream or other natural source of water supply, and the name to which the petitioners desire the same to be changed, together with the reasons for the desired change of name.

(c) The petition must be signed by not less than ten owners of real property abutting upon said watercourse or other natural source of water supply, or owning water rights upon the same.

(d) The names of all persons or corporations owning real estate abutting upon, or water rights upon the same, whose titles appear of record in the office of the county clerk and recorder in the county in which the said watercourse or other natural source of water supply, or some part thereof, is situated; provided, however, that the insufficiency of the petition in any of the above respects shall not be held to defeat the jurisdiction of the court.

Notice of Application.

Section 2. When such petition is filed in the district court, the court or the judge thereof shall designate some newspaper of general circulation in the county, such as is most likely to give all parties interested notice of the proceedings, and shall order that notice be published therein as herein-after provided and in his discretion he may require any other and further notice that to him may seem reasonable, and shall fix a time at which objections to the granting of the petition for the change of name shall be heard. A copy of the petition together with a notice of the time set for hearing objections thereto shall be published in the newspaper designated by the court or judge for that purpose, at least once a week for four (4) successive weeks, and such other and further notice of the proceedings shall be given as the court or judge may, in his discretion, require.

Filing of Objections and Hearing Thereof.

Section 3. At the time set for hearing, or at any time prior thereto, objections may be filed by any person who can in such objections show to the court or judge good reason against such change of name. The application and the objections must be heard at such time as the court or judge may appoint. On hearing, the court or judge may examine on oath any of the petitioners, remonstrance, objectors, or other persons touching the application and may make an order changing the name or dismissing the application, as to the court or judge may seem right and proper.

Filing of Judgment—Annual Return by Clerk.

Section 4. If the change of name be ordered a copy of the judgment duly certified by the clerk of the court, shall be filed with the county clerk and recorder of the county in which the said watercourse or other natural source of water supply is situated. And the clerk of the court shall annually, in the month of January, make a return to the office of the Secretary of State, of all changes of names made in the district court of his county under this section.

This act shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 4, 1911.

PURCHASE OF MITCHELL AND MUSSIGBROD PROPERTY.

Chapter 143, Laws 1911, page 426.

An act providing for an Appraisal Commission to investigate and report with respect to the reasonable value of the property of the copartnership of Mitchell and Mussigbrod, located in Deer Lodge county, the purchase of which has been recommended by joint committee; providing for the acceptance of the terms of this act and for arbitration in order to reach agreement respecting the value of the property, and prescribing the duties of the state board of examiners in the premises.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That the state of Montana may in accordance with the provisions of this act, make purchase of the property of the copartnership of Mitchell and Mussigbrod located at Warm Springs, in Deer Lodge county, which has been recommended by unanimous report of the joint committee of the Senate and House to be purchased by part payment in cash and the balance with a state bond issue; provided that the state shall not pay therefor an amount in excess of the sum of six hundred fifty thousand (\$650,000) dollars, and provided further that no land shall be purchased unless the same shall be free and clear of all liens, easements and encumbrances and unless the grantors are able to and do convey an absolute title in fee simple to the state.

Section 2. There shall be appointed by the Governor a commission of three citizens of this state for the purpose of making full investigation and examination into the reasonable value of said property. Said commission shall on a date to be designated by the Governor, meet in the capitol building at Helena, and organize by appointing a chairman and secretary. The secretary shall be a person selected by the commission, not a member of the commission.

Section 3. The members of said commission shall receive the sum of ten dollars per day for each and every day by them actually spent in making investigation concerning the reasonable value of said property, and their actual and necessary traveling expenses, and the secretary shall receive a salary of one hundred twenty-five (\$125) dollars per month.

Section 4. The per diem and expenses of said commission, and salary of the secretary, shall be paid upon approval by the board of examiners from the appropriation made for the care and maintenance of the insane asylum.

Section 5. Immediately upon appointment of said commission and said secretary, they shall qualify by subscribing the constitutional oath of office and file the same, together with certified copy of their appointment in the office of the Secretary of State.

Section 6. To aid them in the examination of the books and records and in determining the valuation of property, they shall be authorized to appoint assistants such as architects, building contractors, livestock men, and others.

Section 7. When said commission shall have finally completed its work and labors to its satisfaction and fixed all valuations, it shall thereupon call before it the representatives of said copartnership in an endeavor to come to an understanding as to the correctness of the valuations by it fixed, so as to treat said copartnership justly and fairly.

Section 8. After such hearing, if it be found that said commission and the copartnership are able to agree as to the reasonable value of said property, it shall report its findings and recommendations to the State Board of Examiners, and said board shall thereupon enter into contract in the name of the state of Montana for the purchase of said property in accordance with the recommendations of the joint committee hereinabove referred to, and the report and recommendations of said commission.

Section 9. After such hearing, should it be found that the commission and the copartnership disagree as to the reasonable amount to be paid for such property said copartnership shall thereupon be permitted to name three disinterested citizens to act in conjunction with said commission, and said commission and the persons so named by the copartnership shall agree upon and select another person, thus making the commission comprise seven in number instead of three, to be known as the Arbitration Commission under the terms and provisions of this act.

Section 10. In the event of the appointment of an Arbitration Commission, as herein provided, the copartnership shall bear and pay the expenses incident to travel and per diem of the four persons named in order to complete the number of the Arbitration Commission.

Section 11. The Arbitration Commission shall thereupon at once organize and proceed to consider and review the work of the Appraisal Commission and the differences existing between said Appraisal Commission and the copartnership, and when they shall finally have completed their work they shall have full and complete report and recommendations to the State Board of Examiners, and their recommendations as to the purchase price to be paid shall be final and conclusive both as to the state and the copartnership.

Section 12. Before the approval of this law by the Governor, the copartnership is hereby required to execute a written acceptance of the terms and provisions of this act in form to be approved by the Attorney General, and deliver same to the Governor, and upon approval of the act such written acceptance shall be placed on file in the office of the Secretary of State.

Section 13. The State Board of Examiners shall not be authorized to expend any money from the general treasury for the purchase of said property, or to issue any bonds therefor in accordance with other acts pertaining to this subject until said commission shall have made full report and recommendations nor until the Attorney General shall be fully satisfied with respect to all titles, nor until the purchase of the property at the price agreed upon shall be ratified by the people at the polls.

Section 14. This act shall be in full force and effect from and after its passage and approval.

* Approved March 13, 1911.

BONDS FOR PURCHASE OF MITCHELL AND MUSSIGBROD PROPERTY.

Chapter 144, Laws 1911, page 429.

“An act to authorize the state of Montana to become indebted in excess of the constitutional limit and to provide for the issuance of bonds in the name of the state for the purchase of the property of Mitchell & Mussigbrod, located in Deer Lodge county, Montana, such property to be used for the care of the state’s indigent insane, and others in need of hospital attention and treatment, all in accordance with the report of the Joint Committee appointed pursuant to Senate Joint Resolution No. 2.”

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The State Board of Examiners of the state of Montana is hereby authorized and empowered to issue bonds in the name of the state of Montana to an amount not exceeding six hundred and fifty thousand dollars (\$650,000) in excess of the constitutional limitation of indebtedness of one hundred thousand (\$100,000) dollars; provided, however, that bonds heretofore issued and now outstanding shall not be computed so as to in any manner interfere with the bond issue under the terms and provisions of this act to the full amount of six hundred and fifty thousand (\$650,000) dollars. The bonds, or money derived from said bonds to be used in payment of the purchase price of the property of Mitchell & Mussigbrod, in Deer Lodge county, to be used for the care of the state’s indigent insane and others needing hospital treatment and attention, all in accordance with the report of the Joint Committee appointed pursuant to Senate Joint Resolution No. 2.

Section 2. The state bonds, issuance of which is herein provided for, shall be issued in denominations of one thousand (\$1,000) dollars each, and shall bear date December 1, 1912, and become due in twenty (20) years from the date of issuance, and be redeemable and payable, at the option of the state, ten (10) years from their date, or at any interest paying period, and they shall bear interest at the rate of four per cent (4%) per annum, payable semi-annually on the first days of December and June of each year at the office of the State Treasurer of the state of Montana.

Section 3. Each bond issued under the provisions of this act shall contain a condition substantially as follows:

“This bond is one of a series of state bonds of the denomination of one thousand dollars, each of like tenor and date, numbered from one (1) to inclusive, and aggregating the sum of dollars. The right is hereby reserved to redeem this bond at any regular interest paying period, as stated herein, by payment of the principal and interest in full to the date of redemption; provided that not less than ten (10) days’ notice shall be given by the State Treasurer, in writing, or by publication of such intention on the part of the state to make redemption.”

The form of notice and method of giving same shall be in accordance with the direction of the State Board of Examiners.

Section 4. There shall be levied annually one-fourth ($\frac{1}{4}$) of a mill on the dollar on all taxable property in this state, which when collected by the county treasurer shall be accounted for and paid over to the State Treasurer to be by the State Treasurer held in a separate fund designated as the “State Insane Asylum Bond Fund,” and same shall be used exclu-

sively for the payment of interest on such bonds and for the redemption thereof.

Section 5. The bonds shall be in such form as shall be prescribed by the Attorney General and approved by the State Board of Examiners, and shall be signed by the members of said board and issued under the great seal of the state of Montana, and shall be registered in the office of the State Treasurer. The bonds shall have interest coupons attached covering the interest due semi-annually, and shall have the lithographed facsimile signature of the members of the State Board of Examiners affixed thereon.

Section 6. The bonds herein authorized and provided for shall be disposed of by the State Board of Examiners in such manner as seems for the best interests of the state in carrying out the terms and provisions of this act, and none of said bonds shall be sold or disposed of for less than its face value.

Section 7. When the purchase price of the property belonging to said Mitchell and Mussigbrod so to be acquired is fixed through arbitration, as provided for, it shall be the duty of the Governor to cause the question of its purchase at the price designated to be submitted to the electors at the next ensuing general election, the ballots expressly designating such price, and upon receiving a majority of all the votes cast for and against its purchase at such election it shall be declared approved. Each county clerk in this state shall have separate ballots printed and furnished to each precinct in his county in the same manner as regular ballots, to be used by the electors to vote upon the question herein submitted to them for approval. Said separate ballots shall be in conformity with the provisions of the general election laws of this state, and shall have printed thereon the following:

“For the law authorizing a state bond issue of dollars for the purchase of property of Mitchell & Mussigbrod, to be used by the state for the care of its indigent insane and others needing hospital attention and treatment.”

“Against the law authorizing a state bond issue of dollars for the purchase of property of Mitchell and Mussigbrod, to be used by the state for the care of its indigent insane and others needing hospital attention and treatment.”

The elector shall vote said ballot by making an “X” in the square in front of the proposition he desires to vote upon.

Section 8. This act shall be in full force and effect from and after its passage and approval.

Approved March 13, 1911.

FLOATING OF LOGS.

Chapter 147, Laws 1911, page 496.

“An act prohibiting any person, copartnership or corporation from obstructing the waters of any navigable lake within the state of Montana, to such an extent that the public cannot have free access to the same, and regulating the handling and disposition of logs floated in and upon such navigable lake, and providing punishments for the violation of this act.”

Be it enacted by the Legislative Assembly of the State of Montana:

Regulation of Floating of Logs on Navigable Lake.

Section 1. Any person or corporation who shall run or float sawlogs or other timber upon the surface of any navigable lake within the state of Montana, shall not allow such sawlogs or other timber to accumulate along the shore, or in any bay, of such navigable lake, in such a way as to obstruct or interfere with free access to any lands lying between high-water mark and low-water mark of such lake, and between high-water mark and the open waters of such lake so as to leave at all times one hundred and fifty feet open water along the shore of such lake, except as provided in section 2 of this act.

Logs on Navigable Lake not to Obstruct Passage.

Section 2. Any person or corporation using the waters of any navigable lake for floating logs or timber, shall so dispose of such logs and timber along the shore, or in any bay, of any such navigable lake within the state of Montana, that a free passageway from high-water mark to the unobstructed surface of such lake shall at all times be left open, and such passageway shall not be less than one hundred and fifty feet in width of open water along the shore of such lake, provided that said logs may be held at a distance of less than one hundred and fifty feet from the shore, where the land abutting the water is owned by the same party owning the logs, but if such logs occupy the water for a distance of six hundred feet or more along the shore of such lake, then and in that event an open channel not less than one hundred feet in width shall be maintained through said logs from the shore, to the open waters of the lake, and one such open channel shall be maintained for each six hundred feet of the shore line that is so obstructed.

Violation of Act a Misdemeanor.

Section 3. Any person or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding five hundred dollars (\$500), or imprisonment in the county jail not exceeding a period of thirty days, or by both such fine and imprisonment.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

Section 5. This act shall be in full force and effect from and after its passage and approval.

Approved March 17, 1911.

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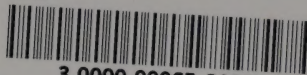
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